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4 Spokane, Washington 99201  
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6 Facsimile: (509) 838-1416

7 Attorneys for Defendant Daniel N. Gordon, P.C.

8  
9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF WASHINGTON

11 THELMA MCBROOM,

12  
13 Plaintiff,

No. CV-12-342-EFS

14 vs.

DEFENDANT DANIEL N.  
GORDON, P.C.'S NOTICE OF  
REMOVAL  
(SPOKANE COUNTY SUPERIOR  
COURT CAUSE NO. 12-1-01208-8)

15 DANIEL N. GORDON, P.C., an  
16 Oregon debt collection law firm, and  
17 ASSET ACCEPTANCE, LLC, a  
18 Delaware Limited Liability Company,

19 Defendants.

20 Defendant Daniel N. Gordon, P.C. ("DNG"), by and through its counsel,  
21 Kevin J. Curtis of Winston & Cashatt, P.C., hereby files this Notice of Removal of  
22 the above-described action to the United States District Court for the Eastern  
23  
24

1 District of Washington from the Spokane County Superior Court where the action  
2  
3 is now pending pursuant to 15 U.S.C. §§1441 and 1446 and states:

4 I.

5 Defendant DNG is a named defendant in the above-entitled action.  
6

7 II.

8 A civil action was filed on March 28, 2012, in the Spokane County Superior  
9 Court in and for the State of Washington, Cause No. 12-2-01208-8 against  
10 defendants DNG and Asset Acceptance, LLC, a Delaware Limited Liability  
11 Company ("Asset Acceptance"), and is now pending in that court. The Summons  
12 and Complaint (copies attached as Exhibit Nos. 1 and 2) were served on Defendant  
13 Asset Acceptance on March 8, 2012 through its registered agent in the State of  
14 Washington, CT Corporation System. The Summons and Complaint were served  
15 on Defendant DNG by mail to Kevin J. Curtis, counsel for DNG who was  
16 authorized to accept service for DNG, on April 25, 2012.  
17  
18  
19

20 III.

21 The Spokane County Superior Court suit is a civil action to recover damages  
22 in connection with Defendants' attempts to collect upon a debt alleged owing by  
23  
24

1 Plaintiff. Plaintiff has alleged violations of 15 U.S.C. §1692 et seq, the Fair Debt  
2 Collection Practices Act ("FDCPA), RCW 19.16, the Washington Collection  
3 Agency Act ("WCAA") and RCW 19.86, the Washington Consumer Protection  
4 Act ("WPCA").  
5

6  
7 IV.

8 This action is a civil proceeding of which this court has original jurisdiction  
9 pursuant to 15 U.S.C. §1692(k)(d) and 28 U.S.C. § 1331, and Defendant DNG is  
10 now entitled to remove the action to this federal court pursuant to 28 U.S.C.  
11 §§1441 and 1446, in that:  
12

- 13 1. Plaintiff has asserted a claim under 15 U.S.C. §1692 et seq, thus  
14 rendering removal proper under 28 U.S.C. §§1441(c)(1)(A) and 1331.  
15
- 16 2. Plaintiff has asserted claims under Washington law in the action  
17 related to her claims under 15 U.S.C. §1692 et seq that form part of  
18 the same case or controversy under Article III. Therefore,  
19 supplemental jurisdiction and removal of those claims is proper under  
20 28 U.S.C. §§1367 and 1441(c)(B).  
21  
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1  
2 3. Defendant DNG was served with a Summons and Complaint on  
3 April 25, 2012, and this action was removed within 30 days of the  
4 receipt of the Summons and Complaint by service; and

5  
6 4. This action was originally brought in Spokane County Superior Court  
7 which is within the district of this federal court.

8 V.

9  
10 The following documents constitute all of the documents, process, and  
11 pleadings which were served upon the Defendant DNG in this action:

- 12 a. Summons, attached hereto as Exhibit 1;  
13  
14 b. Complaint, attached hereto as Exhibit 2;  
15  
16 c. Declaration of Service of Summons and Complaint on Asset  
17 Acceptance, attached hereto as Exhibit 3;  
18  
19 d. Motion and Declaration for Order of Default Against Asset  
20 Acceptance, attached hereto as Exhibit 4;  
21  
22 e. Note for Hearing on Motion for Default, attached hereto as  
23 Exhibit 5;  
24

- 1 f. Certificate of Service, attached hereto as Exhibit 6;
- 2
- 3 g. Notice of Appearance filed by Winston & Cashatt; attached
- 4 hereto as Exhibit 7;
- 5
- 6 h. Notice of Appearance filed by Daniel Gordon for Asset
- 7 Acceptance, attached hereto as Exhibit 8;
- 8
- 9 i. Asset's Motion to Dismiss for Failure to State a Claim and
- 10 Motion to Strike, attached hereto as Exhibit 9;
- 11
- 12 j. Note for Hearing on Asset's Motion to Dismiss, attached hereto
- 13 as Exhibit 10;
- 14
- 15 k. Certificate of Service of Summons and Complaint on the
- 16 Washington Attorney General, attached hereto as Exhibit 11;
- 17
- 18 l. Plaintiff's Opposition to Asset's Motion to Dismiss and Motion
- 19 to Strike, attached hereto as Exhibit 12;
- 20
- 21 m. Notice of Absence and Unavailability; attached hereto as
- 22 Exhibit 13;
- 23
- 24 n. Note for Hearing on Asset's Motion to Dismiss and Motion to
- Strike, attached hereto as Exhibit 14;

1           o. Notice of Withdrawal and Substitution of Counsel, attached  
2  
3 hereto as Exhibit 15; and

4           p. Certificate of Service of Summons and Complaint on Daniel N.  
5  
6 Gordon, P.C., attached hereto as Exhibit 16.

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VI.

I have communicated with John D. Munding, counsel for Defendant Asset Acceptance, who has stated that Asset Acceptance will be filing a Notice of Consent to Removal.

VII.

Defendant will give written notice of the filing of this notice as required by 28 U.S.C. §1446(d).

A copy of this Notice will be filed with the Clerk of the Spokane County Superior Court as required by 28 U.S.C. §1446(d).

WHEREFORE, Defendant DNG prays that this court accept this Notice of Removal and that the above-entitled action now pending in the Superior Court of Washington, County of Spokane, Cause No.12-2-01208-8, be removed from the Spokane County Superior Court to the United States District Court for the Eastern

1 District of Washington.  
2

3 DATED this 8<sup>th</sup> day of May, 2012.

4 s/Kevin J. Curtis, WSBA No. 12085

5 WINSTON & CASHATT, LAWYERS, a  
6 Professional Service Corporation  
7 Attorney for Defendant Daniel N. Gordon,  
8 P.C.

9 601 W. Riverside, Ste. 1900

10 Spokane, WA 99201

11 (509) 838-6131

12 Facsimile: (509) 838-1416

13 E-mail Address: [kjc@winstoncashatt.com](mailto:kjc@winstoncashatt.com)  
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DEFENDANT DANIEL N. GORDON, P.C.'S  
NOTICE OF REMOVAL ...

Page 7

*Winston & Cashatt*  
A PROFESSIONAL SERVICE CORPORATION  
Bank of America Financial Center  
601 West Riverside Avenue, Suite 1900  
Spokane, Washington 99201-0695  
(509) 838-6131

**CERTIFICATE OF SERVICE**

I hereby certify that on May 8, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

SaraEllen Hutchison  
Law Office of SaraEllenHutchison, PLLC  
saraellen@saraellenhutchison.com

Attorney for Plaintiff

John D. Munding  
Crumb & Munding, P.S.  
munding@crumb-munding.com

Attorneys for Defendant Asset Acceptance, LLC

s/Kevin J. Curtis, WSBA No. 12085  
WINSTON & CASHATT, LAWYERS, a  
Professional Service Corporation  
Attorney for Defendant Daniel N. Gordon,  
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(509) 838-6131  
Facsimile: (509) 838-1416  
E-mail Address: kjc@winstoncashatt.com



COPY  
ORIGINAL FILED

MAR 28 2012

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK  
TARIEITZEN

STATE OF WASHINGTON  
SPOKANE COUNTY SUPERIOR COURT

THELMA MCBROOM,

Plaintiff,

v.

DANIEL N. GORDON, P.C., an Oregon  
debt collection law firm, and ASSET  
ACCEPTANCE, LLC, a Delaware Limited  
Liability Company,

Defendants.

NO. 12201208-8

SUMMONS

**TO THE DEFENDANTS, DANIEL N. GORDON, P.C., an Oregon debt collection law firm, and ASSET ACCEPTANCE, LLC, a Delaware Limited Liability Company:** A lawsuit has been started against you in the above-entitled Court by Plaintiff. Plaintiff's claims are stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and by serving a copy upon the person signing this Summons within twenty (20) days after the service of this Summons, excluding the day of service, or within sixty (60) days if this Summons is served outside the State of Washington, or within forty (40) days if this Summons is served through the Insurance Commissioner's Office, or a default judgment may be

SUMMONS - Page 1 of 2

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Phone (509) 252-1899 | Fax (877) 485-4893

EXHIBIT

tabbies

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1 entered against you without notice. A default judgment is one where Plaintiff is entitled to what  
2 it asks for because you have not responded. If you serve a notice of appearance on the  
3 undersigned person, you are entitled to notice before a default judgment may be entered.

4 You may demand that the Plaintiff file this lawsuit with the Court. If you do so, the  
5 demand must be in writing and must be served upon the person signing this Summons. Within  
6 fourteen (14) days after you serve the demand, the Plaintiff must file this lawsuit with the Court,  
7 or the service on you of this Summons and Complaint will be void.

8 If you wish to seek the advice of an attorney in this matter, you should do so promptly so  
9 that your written response, if any, may be served on time.

10 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State  
11 of Washington.

12 DATED this 6<sup>th</sup> day of March, 2012.

13 PLAINTIFF'S COUNSEL

14 

15 SARAELLEN HUTCHISON, WSBA #36137  
16 107 S. Howard, Suite 230  
17 Spokane, WA 99201  
18 Phone (509) 252-1899  
19 Fax (877) 485-4893  
20  
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COPY  
ORIGINAL FILED

MAR 28 2012

THOMAS R. FALLOQUIST  
SPOKANE COUNTY CLERK

TARI EITZEN

STATE OF WASHINGTON  
SPOKANE COUNTY SUPERIOR COURT

THELMA MCBROOM,

Plaintiff,

v.

DANIEL N. GORDON, P.C., an Oregon  
debt collection law firm, and ASSET  
ACCEPTANCE, LLC, a Delaware Limited  
Liability Company,

Defendants.

NO. 12201208-8

PLAINTIFF'S VERIFIED COMPLAINT  
FOR INJUNCTIVE RELIEF FOR  
VIOLATIONS OF THE CONSUMER  
PROTECTION ACT, THE  
COLLECTION AGENCY ACT, AND  
THE FAIR DEBT COLLECTION  
PRACTICES ACT, INTER ALIA

COMES NOW, Plaintiff THELMA MCBROOM, by and through her attorney,  
SARAELEN HUTCHISON, and complains against the Defendants as follows:

**I. STATEMENT OF THE CASE**

This is an action for injunctive relief to prevent further harm to Plaintiff and to prevent  
future harm to other Washington consumers and debtors and to prevent Defendant's future  
violations of the Fair Debt Collection Practices Act (FDCPA), the Washington State Collection  
Agency Act (CAA) and the Washington State Consumer Protection Act (CPA).

PLAINTIFF'S COMPLAINT

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## II. PARTIES

2.1 Plaintiff, THELMA MCBROOM, is a resident of Spokane County, Washington.

2.2 Defendants allege that Plaintiff owes a consumer debt.

2.3 Defendants' collection attempts upon that debt form the subject matter of this lawsuit.

2.4 Plaintiff is therefore a "debtor" and "consumer" as defined by the FDCPA, the TCPA, the CAA, and the CPA, and acted as a "debtor" and "consumer" at all times relevant to this litigation.

2.5 Defendant, DANIEL N. GORDON, P.C., (hereinafter, "GORDON") is an Oregon debt collection law firm and a business which regularly collects debts owed to others, and which conducts business in this state pursuant to Oregon Registry No. 093335-84.

2.6 Defendant, ASSET ACCEPTANCE, LLC, (hereinafter "ASSET"), a Delaware Limited Liability Company, is a debt buyer, a third party debt collector, and a business, which is registered to conduct business in this state pursuant to UBI No. 603014423.

2.7 GORDON is notorious for aggressive debt collection practices; a Google search for *Daniel Gordon debt collector complaint* produces about **68,300 results**.

2.8 ASSET is also notorious for aggressive debt collection practices; a Google search for *asset acceptance debt collector complaint* produces about **398,000 results**.

2.9 Defendants are both "debt collectors" as defined by the FDCPA, "collection agencies" as defined by the CAA and "businesses" as defined by the CPA, and Defendants acted as such at all times relevant to this complaint.

## III. JURISDICTION AND VENUE

3.1 Jurisdiction and Venue in Spokane County Superior Court are appropriate

PLAINTIFF'S COMPLAINT

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where all acts at issue and described herein occurred in Spokane County Washington, and where the injury to Plaintiff occurred in Spokane County Washington, and where the Defendants have engaged in substantial business contacts in Spokane County Washington, and where Defendants have already submitted to this jurisdiction by attempting to collect a debt in this jurisdiction, and where the Plaintiff prays for injunctive relief. RCW 4.12.020; 4.12.025; 4.28.180; 4.28.185; and 7.40.010.

3.2 Defendants are liable unto Plaintiff pursuant to the provisions of the Consumer Protection Act, RCW 19.86 et seq., the Collection Agency Act, RCW 19.16 et seq., the Fair Debt Collection Practices Act, 15 U.S.C. §1692, et seq., as well as other applicable state and federal laws.

#### IV. FACTS

4.1 Defendants allege that Plaintiff owes a consumer debt, a Citibank credit card.

4.2 In 2011, Defendant GORDON began calling Plaintiff at home approximately every day to collect a consumer debt.

4.3 Plaintiff, who is originally from the Philippines and moved to the United States as an adult, experiences difficulty communicating in English.

4.4 Plaintiff would pick up the phone, and a man who identified himself as working for GORDON would talk to Plaintiff so quickly that Plaintiff could not understand everything the man was saying, then the man would hang up.

4.5 The man calling from GORDON's office was rude and abrupt.

4.6 Plaintiff could understand just enough to learn that it was GORDON calling her to collect a debt.

4.7 At other times, GORDON's female employees called Plaintiff to collect.

1  
2 4.8 At no time was Plaintiff made aware that she could request verification and  
3 validation of the debt.

4 4.9 Plaintiff ignored most of GORDON's phone calls, but GORDON still called  
5 approximately every day.

6 4.10 Plaintiff felt helpless about the constant phone calls and thought there was  
7 nothing she could do to make them stop.

8 4.11 Finally, the calls stopped, but then, on January 6, 2012, Plaintiff was served  
9 with a lawsuit, Defendants' debt collection lawsuit against Plaintiff in Spokane County District  
10 Court, case number 11131107 CV.

11 4.12 Defendants' lawsuit was frivolous; it was filed with no intention of going to  
12 trial, and was voluntarily dismissed by Defendants on February 14, 2012.

13 4.13 Defendants' "Notice for General Judgment of Dismissal Without Prejudice"  
14 states that Defendants are dismissing "for the reason that Plaintiff [ASSET] does not wish to  
15 pursue the matter at this time."

16 4.14 Plaintiff experienced a month and a half of frivolous litigation when Defendants  
17 had no intention of going to trial.

18 4.15 Defendants knew that they would not be able to come up with admissible  
19 evidence against Plaintiff for the reasons described below, and that is why they dismiss when  
20 they cannot obtain a default judgment.

21 4.16 Defendants claimed in the Spokane County District Court case number  
22 11131107 CV that ASSET had "purchased" Plaintiff's Citibank "credit card account and  
23 contract."  
24  
25

26 PLAINTIFF'S COMPLAINT

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1  
2 4.17 Defendants' debt collection lawsuits against consumers are like case number  
3 11131107 CV; they involve credit card debts that were allegedly charged off years ago and  
4 allegedly assigned.

5 4.18 As a result, Defendants are well aware that Washington law requires proof of  
6 assent and proof of assignment when suing upon an assigned credit card account.

7 4.19 Defendants know that a debt collector in Washington State must have proof of  
8 assent and proof of assignment before filing a lawsuit against a consumer.

9 4.20 Plaintiff believes, avers, and expects to prove through discovery that at the time  
10 Defendants filed the Spokane County District Court debt collection lawsuit, Defendants did not  
11 have any admissible evidence that Plaintiff assented to the terms of any credit card agreement.

12 4.21 Plaintiff, doing her best to fight Defendants' lawsuit on her own while she  
13 looked for counsel, filed a pro se answer denying that Defendants had evidence of a credit card  
14 contract and denying that ASSET had standing to sue.

15 4.22 On February 3, 2012, Defendants responded by propounding interrogatories and  
16 requests for production to Plaintiff, which demanded that Plaintiff come up with the evidence  
17 Defendants should have had before filing any lawsuit.

18 4.23 Defendants knew that they must have admissible evidence of assent and  
19 assignment before filing suit, but because they did not, they used the discovery tools to attempt  
20 to obtain this evidence from the consumer.

21 4.24 Inexplicably, Defendants also filed this discovery with the court, in violation of  
22 Spokane County District Court Local Civil Rule 5(d)(6), which provides that unanswered  
23 discovery shall not be filed with the court unless needed for a motion.

24 4.25 Filing this discovery with the court in violation of the court rules is the act of  
25 Defendants who do not believe that their behavior will be closely examined by anyone.

26 PLAINTIFF'S COMPLAINT

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1  
2 4.26 Issuing and filing this discovery is the act of Defendants who are willing to  
3 ignore the rules to profit from an unsophisticated consumer.

4 4.27 Defendants regularly file collection lawsuits just like case number 11131107  
5 CV against consumers without admissible evidence nor reasonable investigation.

6 4.28 It is Defendants' hope that the targets of their lawsuits, Washington consumers  
7 like Plaintiff, do not defend the frivolous lawsuits, so that Defendants can profit from quick  
8 default judgments.

9 4.29 Defendants do not expect their lawsuits to be scrutinized.

10 4.30 When a consumer like Plaintiff is able to locate counsel, Defendants' practice is  
11 to dismiss the collection lawsuit without prejudice, denying the consumer's opportunity to  
12 obtain reimbursement for the consumer's attorney's fees.

13 4.31 When a consumer like Plaintiff, unsophisticated in matters of the debt collection  
14 industry and legal proceedings, manages to thwart Defendants' strategy by avoiding default  
15 judgment, Defendants respond with discovery requests which are designed to harass and  
16 intimidate the unsophisticated pro se litigant and consumer.

17 4.32 While the discovery was pending, Defendants then dismissed the lawsuit  
18 against Plaintiff, claiming that they "do not wish to pursue the matter at this time."

19 4.33 Therefore, Plaintiff believes, avers, and expects to prove through discovery that  
20 Defendants did not have any admissible evidence illustrating that Defendants had the legal  
21 right to collect a credit card debt from Plaintiff.

22 4.34 Furthermore, Plaintiff believes, avers, and expects to prove through discovery  
23 that Defendants knew when Defendants filed the Spokane County District Court debt  
24 collection lawsuit that Defendants did not have any admissible evidence of assent or  
25 assignment.



1  
2 4.35 Plaintiff believes, avers, and expects to prove through discovery that Defendants  
3 repeat these unfair, deceptive, and unconscionable debt collection practices throughout the  
4 state of Washington hundreds if not thousands of times each year.

5 4.36 It is profitable for Defendants to mass-file lawsuits against consumers without  
6 reasonable investigation or any evidence of title or assent to the alleged debts.

7 4.37 Defendants are notoriously cavalier about the rights of consumers and the use of  
8 legal process.

9 4.38 ASSET'S business practices have exposed it to hundreds of lawsuits across the  
10 United States for victimizing consumers.

11 4.39 Likewise, Defendant GORDON'S business model has been "pungently"  
12 criticized: "[L]awyers who are acting as debt collectors are engaging in the entrepreneurial  
13 aspects of law rather than practicing law..." *Lang v. Gordon*, No. C10-819RSL, 2011 WL  
14 62141 at \*3 (W.D. Wash., Jan. 6, 2011) (as quoted and described in the February 2012 issue of  
15 the Washington State Bar Association *Bar News*, page 35; also at the URL  
16 <http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News>).

17 4.40 Defendants are junk debt buyers and junk debt collection attorneys that  
18 intentionally and repeatedly file frivolous and baseless cases in hope to obtain as many default  
19 judgments as possible.

20 4.41 Defendants rarely if ever have admissible evidence that consumers owe  
21 particular debts.

22 4.42 GORDON's clients, such as ASSET, provide GORDON with minimal  
23 electronic information.

24 4.43 Much of this information is outdated, incomplete, or completely false.

1  
2 4.44 Rather than conduct a reasonable investigation before filing a lawsuit, however,  
3 GORDON files lawsuits on behalf of clients like ASSET anyway.

4 4.45 Defendants apparently have no plans to change their business practices and  
5 standards anytime soon, as seen in their lawsuit against and conduct toward Plaintiff.

6 4.46 Plaintiff has suffered shame, embarrassment, marital difficulty, and other  
7 emotional distress because of Defendants' phone calls and frivolous lawsuit.

8 4.47 Plaintiff had to spend time dealing with Defendants' frivolous lawsuit that took  
9 her time away from other, more economically productive activities.

10 4.48 Plaintiff prays that she is treated fairly by the court in the instant case and that  
11 her ordeal will be heard by a jury of her peers.

12 4.49 Plaintiff also prays that Defendants are held accountable for the harm they have  
13 caused and that Defendants will be prohibited from engaging in unfair and unconscionable  
14 practices against any other Washington consumer.

15 **V. FAIR DEBT COLLECTION PRACTICES ACT VIOLATION**

16 **(Application of the Statute)**

17 5.1 Plaintiff re-alleges paragraphs 1 through 4, inclusive as though fully set forth  
18 herein.

19 5.2 Pursuant to the Fair Debt Collection Practices Act (FDCPA), a "consumer" or  
20 "debtor" means "any natural person obligated or allegedly obligated to pay any debt." (See 15  
21 U.S.C. §1692a(3)).

22 5.3 Pursuant to the FDCPA, the term "debt" means: "any obligation or alleged  
23 obligation of a consumer to pay money arising out of a transaction in which the money,  
24  
25

18

property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.” (See 15 U.S.C. §1692a(5)).

5.4 Pursuant to the FDCPA, the term “debt collector” means: “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” (See 15 U.S.C. §1692a(6)).

5.5 ASSET is a business that regularly buys and collects alleged consumer debts, and is without a doubt, a “debt collector” under the FDCPA.

5.6 The FDCPA also applies to attorneys who “regularly” attempt to collect third party debts. (See, Fox v. Citicorp Credit Servs., Inc., 15 F.3d 1507 (9<sup>th</sup> Cir. 1994)).

5.7 An attorney is a “collection attorney” or “debt collector” and “regularly” collects the debts of another if the volume of his collection cases is high, regardless of what percent of his practice the collection cases actually represent. (See Garrett v. Derbes, 110 F.3d 317 (5<sup>th</sup> Cir. 1997); holding that an attorney who collected against 639 different individuals in a nine-month period satisfied the requirement that he “regularly” collected debts for another although those 639 cases only represented .5% of his practice. He was regularly collecting consumer debts because that volume was great enough to meet the threshold.)

5.8 GORDON is a law firm and business that regularly collects consumer debts owed to third parties.

5.9 Both defendants are therefore “debt collectors” as defined by the FDCPA.

5.10 Therefore, the FDCPA applies in this case because the Plaintiff is a “debtor,” the debt at the heart of this case is a “consumer debt,” which arose from a transaction in which

1 the services are primarily for personal, family, or household purposes, and the Defendants are  
2 “debt collectors” that attempted to collect a debt owed to a third party.  
3

4 **VI. FIRST CAUSE OF ACTION**

5 **Fair Debt Collection Practices Act Violation**

6 **(Harassment – Notice Violation – Deceptive Practices – Unfair & Unconscionable Practices)**

7 6.1 Plaintiff re-alleges paragraphs 1 through 5, inclusive as though fully set forth  
8 herein.

9 6.2 The Fair Debt Collection Practices Act states: “A debt collector may not engage  
10 in any conduct the natural consequence of which is to harass, oppress, or abuse any person in  
11 connection with the collection of a debt.” 15 U.S.C. §1692d.

12 6.3 The act specifically prohibits “causing a telephone to ring or engaging any  
13 person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or  
14 harass any person at the called number.” 15 U.S.C. §1692d(5).

15 6.4 The FDCPA also gives debtors the right to request validation of a debt and  
16 requires debt collectors to give debtors written notice of this right and other details about the  
17 debt. 15 U.S.C. §1692g.

18 6.5 This written notice required by the Act must be in the initial communication  
19 from the debt collector, or be provided to the debtor within five (5) days of the initial  
20 communication. 15 U.S.C. §1692g(a).

21 6.6 The written notice must state the amount of the debt and the name of the creditor  
22 to whom it is owed. 15 U.S.C. §1692g(a)(1) – (2).

23 6.7 The written notice must also state that the consumer has thirty days to dispute the  
24 debt, or the collector will assume it to be valid. 15 U.S.C. §1692g(a)(3).

1  
2 6.8 Furthermore, the written notice must state that if the consumer gives written  
3 notice to the debt collector that the consumer disputes the debt, the debt collector will obtain  
4 and verification of the debt or a copy of a judgment against the consumer and mail it to the  
5 consumer. 15 U.S.C. §1692g(a)(4).

6 6.9 The FDCPA also states, "A debt collector may not use any false, deceptive, or  
7 misleading representation or means in connection with the collection of any debt." 15 U.S.C.  
8 §1692e.

9 6.10 The act *broadly* prohibits "The use of any false representation or deceptive  
10 means to collect or attempt to collect any debt or to obtain information concerning a  
11 consumer." 15 U.S.C. §1692e(10). (See, Baker v. G.C. Servs. Corp., 677 F.2d 775, 778 (9<sup>th</sup>  
12 Cir. 1982)).

13 6.11 The act specifically prohibits "the false representation of -- the character,  
14 amount, or legal status of any debt." 15 U.S.C. §1692e(2)(A).

15 6.12 Furthermore, the act specifically prohibits a debt collector from threatening to  
16 take any action that cannot be legally taken or that is not intended to be taken. 15 U.S.C.  
17 §1692e(5).

18 6.13 The FDCPA also states: "A debt collector may not use unfair or unconscionable  
19 means to collect or attempt to collect any debt." 15 U.S.C. §1692f.

20 6.14 Defendants called Plaintiff almost daily for several months in 2011 to collect a  
21 debt.

22 6.15 Defendants would sometimes hang up on Plaintiff.

23 6.16 Defendants began calling Plaintiff before mailing anything in writing.

24 6.17 Plaintiff, who is not a native speaker of English, could understand only some of  
25 what Defendants were telling her.

1  
2 6.18 Defendant, therefore, did not notify Plaintiff that she could request verification  
3 and validation of the debt.

4 6.19 Plaintiff, in her pro se answer to the Spokane County District Court lawsuit,  
5 demanded "proof" from Defendants.

6 6.20 Nevertheless, Defendants have still failed or refused to provide verification and  
7 validation of the debt.

8 6.21 Plaintiff felt helpless to make Defendants' calls stop.

9 6.22 Defendants' phone calls could only be intended to annoy, harass, oppress, and  
10 abuse Plaintiff.

11 6.23 Defendants stopped calling only to file a frivolous lawsuit against Plaintiff in  
12 Spokane County District Court, case number 11131107 CV, with no admissible evidence of  
13 assent or standing to sue.

14 6.24 Plaintiff could not immediately find counsel to assist her in defending case  
15 number 11131107 CV, so she filed a pro se answer to avoid a default judgment.

16 6.25 Defendants' quick default judgment scheme foiled, Defendants issued discovery  
17 to Plaintiff demanding that Plaintiff provide evidence that Defendants should have had before  
18 filing a lawsuit.

19 6.26 Defendants hoped to take advantage of an unsophisticated consumer and pro se  
20 litigant by issuing this discovery.

21 6.27 Defendants filed this discovery with the court, with no apparent purpose for  
22 doing so other than to embarrass, intimidate, oppress, abuse, and deceive Plaintiff into proving  
23 Defendant's case for them since they could not.

24 //

25  
26 PLAINTIFF'S COMPLAINT

12 Law Office of SaraEllen Hutchison, PLLC  
107 S. Howard, Suite 230 | Spokane, WA 99201  
Phone (509) 252-1899 | Fax (877) 485-4893

1  
2 6.28 Only two weeks after issuing discovery to Plaintiff, Defendants filed a voluntary  
3 dismissal without prejudice on the basis that they did "not wish to pursue the matter at this  
4 time."

5 6.29 Voluntarily dismissing a matter while discovery is pending reveals that  
6 Defendants had no intention of pursuing their case against Plaintiff if they could not obtain a  
7 default judgment, but they harassed her with needless litigation for six weeks anyway.

8 6.30 Defendants' filing a lawsuit without conducting a reasonable investigation  
9 beforehand and with no evidence is an action that Defendants cannot legally take.

10 6.31 Defendants' filing the unanswered discovery requests with the court in violation  
11 of the civil rules is an action that Defendants cannot legally take.

12 6.32 Filing and then dismissing a lawsuit against Plaintiff shows that Defendants had  
13 no intention of going to trial.

14 6.33 By filing a lawsuit against Plaintiff with no evidence of standing or assent,  
15 Defendants have falsely represented the character and legal status of the debt.

16 6.34 Defendant's incessant phone calls to Plaintiff to collect a consumer debt are  
17 unfair and unconscionable.

18 6.35 Defendants' business practice of filing lawsuits with no reasonable investigation  
19 and no admissible evidence is unfair and unconscionable.

20 6.36 Defendants' business practice of filing lawsuits without first conducting a  
21 reasonable investigation and without admissible evidence is an action that Defendants cannot  
22 legally take.

23 6.37 Defendants' business practice of filing lawsuits and dismissing them when the  
24 consumer defends the action is a threat of legal action that is not intended to be taken.

25  
26 PLAINTIFF'S COMPLAINT

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6.38 Defendants' filing a baseless lawsuit against Plaintiff is intended to harass, intimidate, annoy, embarrass and abuse Plaintiff.

6.39 Defendants' collection and litigation tactics, which have caused Plaintiff emotional distress, are unfair, unconscionable, and outrageous.

6.40 Defendants' contacts therefore violated the FDCPA.

6.41 Defendants' violations are frequent, egregious, persistent, intentional, and designed to harass.

6.42 Defendants' actions are a direct and proximate cause of Plaintiff's injuries.

6.43 Defendants' actions illustrate why an injunction is necessary to prevent Defendant from injuring Plaintiff, or any other Washington consumer, with similar practices in the future.

## VII. SECOND CAUSE OF ACTION

### (Washington State Collection Agency Act Violation)

7.1 Plaintiff re-alleges paragraphs 1 through 6, inclusive as though fully set forth herein.

7.2 RCW 19.16.100(2) states that "'Collection agency' means and includes...Any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person."

7.3 RCW 19.16.100(1) states that a "Person" for purposes of the Collection Agency Act "includes individual, firm, partnership, trust, joint venture, association, or corporation."

7.4 RCW 19.16.100(9) states that a "licensee" for purposes of the Collection Agency Act "means any person licensed under this chapter."

7.5 Defendant is a Washington corporation, and therefore a "person" for purposes of the Washington State Collection Agency Act.



1  
2 7.6 Defendant is a Washington-licensed Collection Agency and is therefore a  
3 "Collection Agency," and a "licensee" for purposes of the Washington State Collection  
4 Agency Act.

5 7.7 RCW 19.16.250(8) makes it a prohibited practice for a collector to "Give or  
6 send to any debtor or cause to be given or sent to any debtor, any notice, letter, message, or  
7 form which represents or implies that a claim exists unless it shall indicate in clear and legible  
8 type" specific details about the alleged debt.

9 7.8 Furthermore, RCW 19.16.250(8)(c) states that "If the notice, letter, message, or  
10 form is the first notice to the debtor or if the licensee is attempting to collect a different amount  
11 than indicated in his or its first notice to the debtor, an itemization of the claim asserted must  
12 be made...."

13 7.9 RCW 19.16.250(8)(c) goes on to state that the itemization of the claim must  
14 include, in relevant part: "(i) Amount owing on the original obligation at the time it was  
15 received by the licensee for collection or by assignment; (ii) Interest or service charge,  
16 collection costs, or late payment charges, if any, added to the original obligation by the original  
17 creditor, customer or assignor before it was received by the licensee for collection, if such  
18 information is known by the licensee or employee.... (iii) Interest or service charge, if any,  
19 added by the licensee or customer or assignor after the obligation was received by the licensee  
20 for collection; (iv) Collection costs, if any, that the licensee is attempting to collect; (v)  
21 Attorneys' fees, if any, that the licensee is attempting to collect on his or its behalf or on the  
22 behalf of a customer or assignor; (vi) Any other charge or fee that the licensee is attempting to  
23 collect on his or its own behalf or on the behalf of a customer or assignor."

24 7.10 Additionally, RCW 19.16.250(8)(e) requires additional itemization in the first  
25 communication to the debtor, including: (i) the original account number assigned to the debt  
26 and (ii) the date of the last payment by the debtor to the original creditor.

1  
2 7.11 RCW 19.16.250(13) states that it is a prohibited practice for a collector to:  
3 “Communicate with a debtor or anyone else in such a manner as to harass, intimidate, threaten,  
4 or embarrass a debtor, including but not limited to communication at an unreasonable hour,  
5 with unreasonable frequency....” (Emphasis added.)

6 7.12 RCW 19.16.250(13) goes on to list the kinds of communications that “shall be  
7 presumed to have been made for the purposes of harassment.” (Emphasis added.)

8 7.13 Under RCW 19.16.250(13)(a) a communication is presumptively for the  
9 purpose of harassment if “It is made with a debtor or spouse in any form, manner, or place,  
10 more than three times in a single week, unless the licensee is responding to a communication  
11 from the debtor or spouse.” (Emphasis added.)

12 7.14 RCW 19.16.250(16) prohibits a debt collector from threatening or taking action  
13 that the debt collector cannot legally take.

14 7.15 In violation of RCW 19.16.250(8), Defendants failed or refused to provide  
15 Plaintiff with itemized details and specific information about the alleged debt.

16 7.16 In violation of RCW 19.16.250(13)(a), Defendants called Plaintiff more than  
17 three times per week for several months in 2011.

18 7.17 Defendants violated RCW 19.16.250(13) by talking too fast for a non-native  
19 speaker of English to understand, and then hanging up, which can only be intended to harass,  
20 threaten, and embarrass Plaintiff.

21 7.18 Defendants violated RCW 19.16.250(16) by filing a lawsuit against Plaintiff  
22 with no evidence of standing or assent, issuing discovery for the purpose of harassment, filing  
23 unanswered discovery with the court for no reason, which are all actions that Defendants  
24 cannot threaten or legally take.

1  
2 7.19 Defendants violated RCW 19.16.250(16) by filing a lawsuit against Plaintiff  
3 with no intention of pursuing it.

4 7.20 Defendants violated RCW 19.16.250(16) by filing a lawsuit against Plaintiff  
5 without reasonable investigation and without admissible evidence of a debt.

6 7.21 RCW 19.16.440 states that violation of RCW 19.16 is a *per se* violation of the  
7 Washington State Consumer Protection Act.

8 7.22 Defendants violated both statutes by engaging in multiple practices and  
9 committing various acts against Plaintiff that are prohibited by RCW 19.16.250.

10 7.23 Plaintiff was injured by the Defendants' actions in that the time Plaintiff has  
11 spent dealing with Defendants took Plaintiff's time away from other, more economically  
12 productive activities.

13 7.24 Plaintiff was injured by the Defendants' actions in that Plaintiff's economic  
14 interests are endangered because of Defendants.

15 7.25 Plaintiff was injured by Defendants in that Plaintiff endured months of stress,  
16 harassment, embarrassment, and abuse from Defendants' actions.

17 7.26 Defendants' actions are a direct and proximate cause of Plaintiff's injuries.

18 7.27 Defendants' actions were unfair, deceptive, and explicitly prohibited by the  
19 Washington State Collection Agency Act.

20 7.28 Defendants' actions illustrate why an injunction is necessary to prevent  
21 Defendants from injuring Plaintiff, or any other Washington consumer, with similar practices  
22 in the future.

23 **XIII. THIRD CAUSE OF ACTION**  
**(Consumer Protection Act Violation)**

24 8.1 Plaintiff re-alleges paragraphs 1 through 7, inclusive as though fully set forth  
25 herein.

26 PLAINTIFF'S COMPLAINT

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Phone (509) 252-1899 | Fax (877) 485-4893

1  
2 8.2 Washington's CPA states that: "Unfair methods of competition and unfair or  
3 deceptive acts or practices in the conduct of any trade or commerce are hereby declared  
4 unlawful." See RCW 19.86.020.

5 8.3 The Washington CPA applies to the actions at issue herein because Plaintiff is a  
6 "consumer" and Defendants are "businesses," the complaint involves conduct which occurred  
7 in the course of trade/commerce, the Plaintiff was damaged in her property by the Defendants'  
8 actions, and the complaint involves a matter of public interest which is capable of repetition  
9 and will likely affect other consumers in this state.

10 8.4 Additionally, Defendants violated the Washington Collection Agency Act by  
11 engaging in multiple prohibited collection practices under RCW 19.16.250.

12 8.5 Washington's Collection Agency Act states that any violation of that act is a *per*  
13 *se* violation of the Consumer Protection Act. See RCW 19.16.440.

14 8.6 Defendants' actions are therefore a *per se* violation of the Washington State  
15 Consumer Protection Act.

16 8.7 Plaintiff was injured by Defendants' actions such that Defendants have placed  
17 Plaintiff's economic interests in jeopardy, and took Plaintiff's time away from other, more  
18 economically productive activities.

19 8.8 Defendants' actions are a direct and proximate cause of Plaintiff's injuries.

20 8.9 Defendants' actions were unfair and deceptive.

21 8.10 Defendants' actions illustrate why an injunction is necessary to prevent  
22 Defendants from injuring Plaintiff, or any other Washington consumer, with similar practices  
23 in the future.

## 24 **IX. PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment to be entered against Defendants as  
26 follows:

PLAINTIFF'S COMPLAINT

18 Law Office of SaraEllen Hutchison, PLLC  
107 S. Howard, Suite 230 | Spokane, WA 99201  
Phone (509) 252-1899 | Fax (877) 485-4893

28

1  
2 A. For an Injunction preventing Defendants from ever again contacting Plaintiff for  
3 any reason whatsoever, pursuant to RCW 19.86.090, and Scott v. Cingular Wireless, 160  
4 Wn.2d 843, 161 P.3d 1000 (2007); Hockley v. Hargitt, 82 Wn.2d 337, 349-50, 510 P.2d 1123  
5 (1973); Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 783-  
6 84, 719 P.2d 531 (1986); Lightfoot v. MacDonald, 86 Wn.2d 331, 335-36, 544 P.2d 88 (1976);

7 B. For an Injunction preventing Defendants from ever again collecting upon the  
8 subject debt, pursuant to RCW 19.86.090, and Scott v. Cingular Wireless, 160 Wn.2d 843, 161  
9 P.3d 1000 (2007); Hockley v. Hargitt, 82 Wash.2d 337, 349-50, 510 P.2d 1123 (1973);  
10 Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wash.2d 778, 783-84, 719  
11 P.2d 531 (1986); Lightfoot v. MacDonald, 86 Wash.2d 331, 335-36, 544 P.2d 88 (1976);

12 C. For an Injunction preventing Defendants from ever selling, transferring, or  
13 assigning this debt, pursuant to RCW 19.86.090, and Scott v. Cingular Wireless, 160 Wn.2d  
14 843, 161 P.3d 1000 (2007); Hockley v. Hargitt, 82 Wash.2d 337, 349-50, 510 P.2d 1123  
15 (1973); Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wash.2d 778, 783-  
16 84, 719 P.2d 531 (1986); Lightfoot v. MacDonald, 86 Wash.2d 331, 335-36, 544 P.2d 88  
17 (1976);

18 D. For an Injunction preventing the licensee, the customer of the licensee, or any  
19 other person who may hereafter legally seek to collect on this claim, from ever being allowed  
20 to recover any interest, service charge, attorneys' fees, collection costs, delinquency charge, or  
21 any other fees or charges otherwise legally chargeable to the debtor on such claim, pursuant to  
22 RCW 19.16.450, RCW 19.86.090, and Scott v. Cingular Wireless, 160 Wn.2d 843, 161 P.3d  
23 1000 (2007); Hockley v. Hargitt, 82 Wash.2d 337, 349-50, 510 P.2d 1123 (1973); Hangman  
24 Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wash.2d 778, 783-84, 719 P.2d 531  
25 (1986); Lightfoot v. MacDonald, 86 Wash.2d 331, 335-36, 544 P.2d 88 (1976);

26 PLAINTIFF'S COMPLAINT

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107 S. Howard, Suite 230 | Spokane, WA 99201  
Phone (509) 252-1899 | Fax (877) 485-4893

1  
2 E. For an Injunction preventing Defendants from telephoning any Washington  
3 State consumer, debtor, or citizen who is a non-native speaker of English without a translator,  
4 pursuant to RCW 19.16.450, RCW 19.86.090, and Scott v. Cingular Wireless, 160 Wn.2d 843,  
5 161 P.3d 1000 (2007); Hockley v. Hargitt, 82 Wash.2d 337, 349-50, 510 P.2d 1123 (1973);  
6 Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wash.2d 778, 783-84, 719  
7 P.2d 531 (1986); Lightfoot v. MacDonald, 86 Wash.2d 331, 335-36, 544 P.2d 88 (1976);

8 F. For an Injunction preventing Defendants from telephoning any Washington  
9 State consumer, debtor, or citizen more than three times in any given week, pursuant to RCW  
10 19.16.450, RCW 19.86.090, and Scott v. Cingular Wireless, 160 Wn.2d 843, 161 P.3d 1000  
11 (2007); Hockley v. Hargitt, 82 Wash.2d 337, 349-50, 510 P.2d 1123 (1973); Hangman Ridge  
12 Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wash.2d 778, 783-84, 719 P.2d 531 (1986);  
13 Lightfoot v. MacDonald, 86 Wash.2d 331, 335-36, 544 P.2d 88 (1976);

14 G. For an Injunction preventing Defendants from telephoning any Washington  
15 State citizen with intent to harass or abuse a consumer or debtor, pursuant to RCW 19.16.450,  
16 RCW 19.86.090, and Scott v. Cingular Wireless, 160 Wn.2d 843, 161 P.3d 1000 (2007);  
17 Hockley v. Hargitt, 82 Wash.2d 337, 349-50, 510 P.2d 1123 (1973); Hangman Ridge Training  
18 Stables, Inc. v. Safeco Title Ins. Co., 105 Wash.2d 778, 783-84, 719 P.2d 531 (1986);  
19 Lightfoot v. MacDonald, 86 Wash.2d 331, 335-36, 544 P.2d 88 (1976);

20 H. For Actual and Compensatory damages in an amount to be proven at trial,  
21 pursuant to RCW 19.86 et seq., 15 U.S.C. §1692 et seq., and various common law claims;

22 I. For Statutory damages in the amount of \$1,000 pursuant to 15 U.S.C. §1692 et  
23 seq. and Harvey v. United Adjusters, 509 F. Supp. 1218, 1222 (D. Or. 1981) (“in an aggravated  
24 case of persistent and repeated illegal practices, the full \$1,000 should be awarded”);

25 O. For Incidental and Consequential damages in an amount to be proven at trial;

P. For treble any actual damages up to \$25,000, pursuant to RCW 19.86 et seq;

Q. For costs and reasonable attorneys' fees in an amount to be proven at trial pursuant to 15 U.S.C. §1692 et seq. and RCW 19.86 et seq;

W. For interest on the above amounts as authorized by law;

S. For other relief as the Court deems just and equitable;

T. For leave to amend this complaint as needed and as required;

U. For leave to seek Civil Rule 23(b) status if information becomes available through discovery supporting the need for class action status.

**XI. REQUEST FOR TRIAL BY JURY**

Plaintiff hereby requests a trial by jury pursuant to U.S. Const. Amend. 7 and Washington State Superior Court Civil Rule 38.

**XII. PLAINTIFF'S VERIFICATION**

Thelma McBroom, on oath, says:

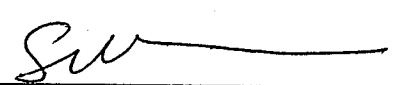
I am the above named Plaintiff in the above entitled action; I have read the foregoing COMPLAINT and know the contents to be true.

  
Thelma McBroom, PLAINTIFF

3/06/2012  
DATE

DATED this 6<sup>th</sup> day of March, 2012.

Respectfully submitted,

  
SARAELLEN HUTCHISON, WSBA #36137  
107 S. Howard, Suite 230  
Spokane, WA 99201  
Phone (509) 252-1899  
Fax (877) 485-4893

PLAINTIFF'S COUNSEL

PLAINTIFF'S COMPLAINT

21 Law Office of SaraEllen Hutchison, PLLC  
107 S. Howard, Suite 230 | Spokane, WA 99201  
Phone (509) 252-1899 | Fax (877) 485-4893



McBroom

Plaintiff/Petitioner

Cause #:

12201208-8

Declaration of Service of:

Summons - Spokane County Superior Court - McBroom v. Asset Acceptance LLC & Daniel N. Gordon P.C. Complaint - Spokane County Superior Court - McBroom v. Asset Acceptance LLC & Daniel N. Gordon P.C.

Hearing Date:

COPY  
ORIGINAL FILED

MAR 28 2012

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

Declaration:

The undersigned hereby declares: That s(he) is now and at all times herein mentioned, a citizen of the United States and a resident of the State of Washington, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

On the date and time of **Mar 8 2012 9:55AM**  
at the address of **1801 WESTBAY DR NW SUITE 206 OLYMPIA**  
within the County of **THURSTON** State of **WASHINGTON**

the declarant duly served the above described documents upon

**CT CORPORATION SYSTEM as Registered Agent for ASSET ACCEPTANCE LLC**

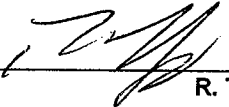
by then and there personally delivering **1** true and correct copy(ies) thereof, by then presenting to and leaving the same with

**MICHELE ROWE AGENT AUTHORIZED TO ACCEPT SERVICE FOR REG. AGENT**

No information was provided that indicates that the subjects served are members of the U.S. military.

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: March 12, 2012 at Olympia, WA

by   
R. Toye

The documents listed above were served in accordance with RCW 4.28.080 and/or client instructions. If service was substituted on another person or left with a person that refused to identify themselves, it is incumbent upon the client to notify ABC Legal Services, Inc. immediately in writing if further attempts to serve, serve by mail, or investigate are required. If service was substituted on another person, pursuant to RCW 4.28.080 (16), service shall be complete on the tenth day after a copy of the documents are mailed to the subject at the address where service was made. Documents were not mailed by ABC Legal Services, Inc.

Service Notes:

Documents:	0.00	Secretarial:	0.00	Other:	95.00
Travel:	0.00	Postage:	0.00	Total:	95.00
Invalid Address ( 0 )	0.00	Photo:	0.00	Pre-Paid Retainer:	95.00
Proof Preparation:	0.00	Rush / Special:	0.00		
Summons Copy:	0.00	Wait / Stake Out Time:	0.00	<b>AMOUNT DUE</b>	<b>0.00</b>

Client Ref.: **McBroom v. Asset & Gordon**  
SaraEllen Hutchison  
PO BOX 899  
Spokane, WA 99210  
509-252-1899

CLIENT COPY  
PROOF OF SERVICE



ABC Legal Serv  
633 Yesler Way  
206 521-9000  
Tracking #: 942



EXHIBIT

3



COPY  
ORIGINAL FILED

MAR 28 2012

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

TARI EITZEN

**SUPERIOR COURT, IN AND FOR THE COUNTY OF SPOKANE, STATE OF  
WASHINGTON**

McBroom

Plaintiff/Petitioner

Cause #:

**12201208-8**

vs.

Asset Acceptance & Daniel Gordon

Defendant/Respondent

Declaration of Service of:

Summons - Spokane County Superior Court - McBroom v.  
Asset Acceptance LLC & Daniel N. Gordon P.C. Complaint -  
Spokane County Superior Court - McBroom v. Asset  
Acceptance LLC & Daniel N. Gordon P.C.

Hearing Date:

**Declaration:**

The undersigned hereby declares: That s(he) is now and at all times herein mentioned, a citizen of the United States and a resident of the State of Washington, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

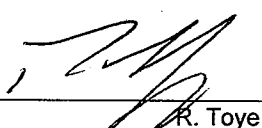
On the date and time of Mar 8 2012 9:55AM at the address of 1801 WESTBAY DR NW SUITE 206 OLYMPIA, within the County of THURSTON, State of WASHINGTON, the declarant duly served the above described documents upon CT CORPORATION SYSTEM as Registered Agent for ASSET ACCEPTANCE LLC by then and there personally delivering 1 true and correct copy(ies) thereof, by then presenting to and leaving the same with MICHELE ROWE AGENT AUTHORIZED TO ACCEPT SERVICE FOR REG. AGENT.

No information was provided that indicates that the subjects served are members of the U.S. military.

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: March 12, 2012 at Olympia, WA

by

  
R. Toye

Service Fee Total: \$ 95.00



ABC Legal Services, Inc.  
206 521-9000  
Tracking #: 9423697



**ORIGINAL  
PROOF OF SERVICE**

McBroom v. Asset & Gordon  
SaraEllen Hutchison  
PO BOX 899  
Spokane, WA 99210  
509-252-1899

33

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### Search Results

Viewing 1 - 1 of 1 results

#### ASSET ACCEPTANCE, LLC

#### ASSET ACCEPTANCE, LLC

**UBI Number** 603014423

**Category** LLC

**Active/Inactive** Active

**State of Incorporation** DE

**WA Filing Date** 05/03/2010

**Expiration Date** 05/31/2012

**Inactive Date**
**Duration** Perpetual

#### Registered Agent Information

**Agent Name** C T CORPORATION SYSTEM

**Address** 1801 WEST BAY DR NW STE 206

**City** OLYMPIA

**State** WA

**ZIP** 98502

#### Special Address Information

**Address**
**City**
**State**
**Zip**
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 Washington Secretary of State - Corporations Division  
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MAR 29 2012

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

TARI S. EITZEN

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON,  
IN AND FOR THE COUNTY OF SPOKANE

THELMA MCBROOM,

Plaintiff,

Case No: 12-02-01208-8 CV

vs.

MOTION AND DECLARATION FOR  
ORDER OF DEFAULT AGAINST ASSET  
ACCEPTANCE, LLC

DANIEL N. GORDON, P.C., an Oregon debt  
collection law firm, and ASSET  
ACCEPTANCE, LLC, a Delaware Limited  
Liability Company,

Defendants.

[EX PARTE]

COMES NOW, the Plaintiff, THELMA MCBROOM, by and through her undersigned  
counsel, SARAELLEN HUTCHISON, and respectfully moves the Court for an Order of Default  
as prayed for in Plaintiff's Complaint against the Defendant, ASSET ACCEPTANCE, LLC, a  
Delaware Limited Liability Company.

DATED this 29<sup>th</sup> day of MARCH, 2012.

PLAINTIFF'S COUNSEL



SARAELLEN HUTCHISON, WSBA #36137  
Law Office of SaraEllen Hutchison, PLLC  
107 S. Howard, Suite 230  
Spokane, WA 99201  
Telephone: 509-252-1899  
Facsimile: 877-485-4893  
Email: saraellenhutchison@gmail.com

35  
EXHIBIT

4

1                                   **DECLARATION OF PLAINTIFF'S COUNSEL**

2           Plaintiff's counsel does hereby declare as follows:

3           1.     She is the attorney for the Plaintiff in the above entitled action and makes this  
4 Declaration in support of the Plaintiff's Motion for Default.

5           2.     **SERVICE**

6           That on March 8, 2012, in Thurston County, Washington, at 1801 Westbay Dr. NW,  
7 Suite 206, Olympia, Washington, 98020, at 9:55 A.M., Defendant, ASSET ACCEPTANCE,  
8 LLC, a Delaware Limited Liability Company, through its registered agent for service of process,  
9 CT CORPORATION SYSTEM, was served with a copy of the Summons and Complaint in the  
10 above entitled matter. The affidavit of such service is filed herein as Exhibit A.

11           More than 20 days have elapsed since the date of service. Defendant, ASSET  
12 ACCEPTANCE, LLC, has not served or filed a Notice of Appearance, nor an Answer to  
13 Plaintiff's complaint.

14           3.     **APPEARANCE**

15           Defendant ASSET ACCEPTANCE, LLC, has failed to serve or file a Notice of  
16 Appearance.

17           4.     **MILITARY DUTY**

18           Defendant ASSET ACCEPTANCE, LLC, is not believed to be incompetent or in the  
19 military service. Defendant ASSET ACCEPTANCE, LLC, is a Company and is therefore not  
20 able to serve in the military, or be a military dependent.

21           5.     **DEFAULT**

22           More than 20 days have elapsed since the date of service and Defendant ASSET  
23 ACCEPTANCE, LLC, has failed to Appear or properly file an Answer herein and is therefore in  
24 default.

25           6.     **JURISDICTION AND VENUE**

          Venue is appropriate because Plaintiff is a resident of Spokane County, Washington; the  
injury to Plaintiff occurred in Spokane County, Washington; all acts at issue in Plaintiff's

1 complaint occurred in Spokane County, Washington; Defendant ASSET ACCEPTANCE, LLC  
 2 is a business which regularly engages in substantial business in the State of Washington;  
 3 Defendant ASSET ACCEPTANCE, LLC, sued Plaintiff in Spokane County, Washington; and  
 4 Plaintiff seeks injunctive relief pursuant to the Consumer Protection Act.

5 **7. RELIEF**

6 Plaintiff's complaint prays for the following certain relief against Defendants:

7 A. For an Injunction preventing Defendants from ever again contacting Plaintiff for  
 8 any reason whatsoever, pursuant to RCW 19.86.090, and Scott v. Cingular Wireless, 160 Wn.2d  
 9 843, 161 P.3d 1000 (2007); Hockley v. Hargitt, 82 Wn.2d 337, 349-50, 510 P.2d 1123 (1973);  
 10 Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 783-84, 719 P.2d  
 11 531 (1986); Lightfoot v. MacDonald, 86 Wn.2d 331, 335-36, 544 P.2d 88 (1976);

12 B. For an Injunction preventing Defendants from ever again collecting upon the  
 13 subject debt, pursuant to RCW 19.86.090, and Scott v. Cingular Wireless, 160 Wn.2d 843, 161  
 14 P.3d 1000 (2007); Hockley v. Hargitt, 82 Wash.2d 337, 349-50, 510 P.2d 1123 (1973); Hangman  
 15 Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wash.2d 778, 783-84, 719 P.2d 531  
 16 (1986); Lightfoot v. MacDonald, 86 Wash.2d 331, 335-36, 544 P.2d 88 (1976);

17 C. For an Injunction preventing Defendants from ever selling, transferring, or  
 18 assigning this debt, pursuant to RCW 19.86.090, and Scott v. Cingular Wireless, 160 Wn.2d 843,  
 19 161 P.3d 1000 (2007); Hockley v. Hargitt, 82 Wash.2d 337, 349-50, 510 P.2d 1123 (1973);  
 20 Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wash.2d 778, 783-84, 719  
 21 P.2d 531 (1986); Lightfoot v. MacDonald, 86 Wash.2d 331, 335-36, 544 P.2d 88 (1976);

22 D. For an Injunction preventing the licensee, the customer of the licensee, or any  
 23 other person who may hereafter legally seek to collect on this claim, from ever being allowed to  
 24 recover any interest, service charge, attorneys' fees, collection costs, delinquency charge, or any  
 25 other fees or charges otherwise legally chargeable to the debtor on such claim, pursuant to RCW  
19.16.450, RCW 19.86.090, and Scott v. Cingular Wireless, 160 Wn.2d 843, 161 P.3d 1000  
 (2007); Hockley v. Hargitt, 82 Wash.2d 337, 349-50, 510 P.2d 1123 (1973); Hangman Ridge

1 Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wash.2d 778, 783-84, 719 P.2d 531 (1986);  
 2 Lightfoot v. MacDonald, 86 Wash.2d 331, 335-36, 544 P.2d 88 (1976);

3 E. For an Injunction preventing Defendants from telephoning any Washington State  
 4 consumer, debtor, or citizen who is a non-native speaker of English without a translator, pursuant  
 5 to RCW 19.16.450, RCW 19.86.090, and Scott v. Cingular Wireless, 160 Wn.2d 843, 161 P.3d  
 6 1000 (2007); Hockley v. Hargitt, 82 Wash.2d 337, 349-50, 510 P.2d 1123 (1973); Hangman  
 7 Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wash.2d 778, 783-84, 719 P.2d 531  
 8 (1986); Lightfoot v. MacDonald, 86 Wash.2d 331, 335-36, 544 P.2d 88 (1976);

9 F. For an Injunction preventing Defendants from telephoning any Washington State  
 10 consumer, debtor, or citizen more than three times in any given week, pursuant to RCW  
 11 19.16.450, RCW 19.86.090, and Scott v. Cingular Wireless, 160 Wn.2d 843, 161 P.3d 1000  
 12 (2007); Hockley v. Hargitt, 82 Wash.2d 337, 349-50, 510 P.2d 1123 (1973); Hangman Ridge  
 13 Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wash.2d 778, 783-84, 719 P.2d 531 (1986);  
 14 Lightfoot v. MacDonald, 86 Wash.2d 331, 335-36, 544 P.2d 88 (1976);

15 G. For an Injunction preventing Defendants from telephoning any Washington State  
 16 citizen with intent to harass or abuse a consumer or debtor, pursuant to RCW 19.16.450, RCW  
 17 19.86.090, and Scott v. Cingular Wireless, 160 Wn.2d 843, 161 P.3d 1000 (2007); Hockley v.  
 18 Hargitt, 82 Wash.2d 337, 349-50, 510 P.2d 1123 (1973); Hangman Ridge Training Stables, Inc.  
 19 v. Safeco Title Ins. Co., 105 Wash.2d 778, 783-84, 719 P.2d 531 (1986); Lightfoot v.  
MacDonald, 86 Wash.2d 331, 335-36, 544 P.2d 88 (1976);

20 H. For Actual and Compensatory damages in an amount to be proven at trial,  
 21 pursuant to RCW 19.86 et seq., 15 U.S.C. §1692 et seq., and various common law claims;

22 I. For Statutory damages in the amount of \$1,000 pursuant to 15 U.S.C. §1692 et  
 23 seq. and Harvey v. United Adjusters, 509 F. Supp. 1218, 1222 (D. Or. 1981) (“in an aggravated  
 24 case of persistent and repeated illegal practices, the full \$1,000 should be awarded”);

25 O. For Incidental and Consequential damages in an amount to be proven at trial;

P. For treble any actual damages up to \$25,000, pursuant to RCW 19.86 et seq;

38

1 Q. For costs and reasonable attorneys' fees in an amount to be proven at trial  
2 pursuant to 15 U.S.C. §1692 et seq. and RCW 19.86 et seq;

3 W. For interest on the above amounts as authorized by law;

4 S. For other relief as the Court deems just and equitable;

5 T. For leave to amend this complaint as needed and as required;

6 U. For leave to seek Civil Rule 23(b) status if information becomes available through  
7 discovery supporting the need for class action status.


8 **8. ATTORNEY'S FEES AND COSTS AND PLAINTIFF'S DAMAGES**

9 Plaintiff is entitled to its costs and attorney's fees pursuant to contract and/or statute.  
10 Declarant states that the sum of \$3,285 (\$2,960 attorney's fees, \$230 filing fee, and \$95 service  
11 of process fee) is a reasonable sum as and for Plaintiff's costs and attorney's fees in the event  
12 judgment is rendered on this Motion.

13 Regarding Plaintiff's damages, they are not a sum certain. Plaintiff is entitled to \$1000 in  
14 statutory damages under the Fair Debt Collection Practices Act, however, Plaintiff's actual  
15 damages under the Washington State Consumer Protection Act will need to be determined  
16 through oral testimony at evidentiary hearing before judgment can be entered in this case.

17 Declarant states that the foregoing statements are true and correct and are made subject to  
18 the penalties of perjury under the laws of the State of Washington.

19 DATED this 29<sup>th</sup> day of March, 2012.

20   
SARAELLEN HUTCHISON, WSBA #36137  
21 Declarant / Attorney for Plaintiff  
22  
23  
24  
25



COPY  
ORIGINAL FILED

MAR 29 2012

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

TARI S. EITZEN

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON,  
IN AND FOR THE COUNTY OF SPOKANE

THELMA MCBROOM,

Plaintiff,

Case No: 12-02-01208-8 CV

vs.

NOTE FOR HEARING --  
ISSUE OF LAW -- MOTION FOR  
DEFAULT

DANIEL N. GORDON, P.C., an Oregon debt  
collection law firm, and ASSET  
ACCEPTANCE, LLC, a Delaware Limited  
Liability Company,

[EX PARTE]

Defendants.

TO THE CLERK OF THE COURT AND TO: Defendant, DANIEL N. GORDON, P.C. and  
your attorneys, WINSTON & CASHATT, LAWYERS, A PROFESSIONAL SERVICE  
CORPORATION.

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned  
counsel will bring on hearing the MOTION FOR DEFAULT, a copy of which is attached. A  
hearing is to be held on **FRIDAY, April 6, 2012 at 9:00 a.m.** at Spokane County Superior  
Court before the Ex Parte Department.

DATED: March 29, 2012

SIGNED: Su

SARAELEN HUTCHISON, WSBA #36137  
Attorney for Plaintiff

NOTE FOR HEARING -- ISSUE OF LAW --  
MOTION FOR DEFAULT Page 1 of 2

Law Office of SaraEllen Hutchison  
107 S. HOWARD, SUITE 230 | SPOKANE, WA  
PH (509) 252-1899 | FAX (877) 485-4854

EXHIBIT

5

40



**AUTHORITIES**

(Cite those authorities which form primary basis for your legal position. Where case authority is cited, provide reference to specific page of opinion which is controlling. Likewise reference applicable sections or subsection of statutes or court rules. This does not substitute for required Memorandum of Authorities.)

Applicable Court Rule: CR 55, LCR 55

Applicable Statute:

Applicable Case Law:

**Note: CONFIRMATION: ON ANY MOTION, COUNSEL FOR THE MOVING PARTY SHALL CONTACT THE PERSON RESPONSIBLE FOR SCHEDULING FOR THE JUDGE OR COMMISSIONER THREE COURT DAYS PRECEDING THE DATE SET FOR HEARING AND ADVISE WHETHER THE MOTION WILL BE HEARD. IF NOTIFICATION IS NOT MADE, THE MOTION WILL BE STRICKEN FOR RESETTING PURSUANT TO LCR 40 AND TERMS CONSIDERED.**

COPY  
ORIGINAL FILED

MAR 29 2012

**CERTIFICATE OF SERVICE**

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK  
**TARI S. EITZEN**

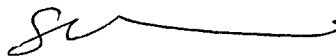
I hereby certify under penalty of perjury under the laws of the state of Washington that  
on the 29<sup>th</sup> day of March, 2012, true and correct copies of the foregoing

1. NOTE FOR HEARING – ISSUE OF LAW – MOTION FOR DEFAULT
2. MOTION AND DECLARATION FOR ORDER OF DEFAULT AGAINST ASSET ACCEPTANCE, LLC
3. PROPOSED ORDER OF DEFAULT AGAINST ASSET ACCEPTANCE, LLC
4. CONFORMED COPIES OF SUMMONS & COMPLAINT

were **hand delivered** to:

WINSTON & CASHATT, LAWYERS, A PROFESSIONAL SERVICE CORPORATION  
601 WEST RIVERSIDE AVENUE, SUITE 1900  
SPOKANE, WA 99201-0695

Dated this 29<sup>th</sup> day of March, 2012, at Spokane, Washington.

  
SaraEllen M. Hutchison

EXHIBIT

6

COPY  
ORIGINAL FILED

MAR 30 2012

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

THELMA MCBROOM,

Plaintiff,

No. 12-2-01208-8-CV

vs.

NOTICE OF APPEARANCE

DANIEL N. GORDON, P.C., an Oregon debt  
collection law firm, and ASSET  
ACCEPTANCE, LLC, a Delaware Limited  
Liability Company,

Defendants.

TO THE ABOVE-NAMED PLAINTIFF AND TO YOUR ATTORNEY:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the firm of Winston &  
Cashatt, Lawyers, a Professional Service Corporation, hereby enters its appearance in the  
above-entitled case as attorneys for the defendant, Daniel N. Gordon, P.C., and requests that any

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NOTICE OF APPEARANCE  
PAGE 1

EXHIBIT

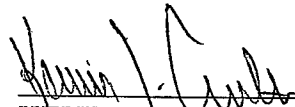
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*Winston & Cashatt*  
A PROFESSIONAL SERVICE CORPORATION  
Bank of America Financial Center  
601 West Riverside Avenue, Suite 1900  
Spokane, Washington 99201-0695  
(509) 838-6131

43

1 and all further pleadings, papers or notices, except original process, in the above-entitled cause  
2 be served upon the undersigned attorneys for defendant at the address below stated.  
3

4 DATED this 14<sup>th</sup> day of March, 2012.

5   
6 KEVIN J. CURTIS, WSBA No. 12085  
7 WINSTON & CASHATT, LAWYERS, a Professional  
8 Service Corporation  
9 601 W. Riverside, Ste. 1900  
10 Spokane, Washington 99201  
11 Telephone: (509) 838-6131  
12 Facsimile: (509) 838-1416  
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NOTICE OF APPEARANCE  
PAGE 2

*Winston & Cashatt*  
A PROFESSIONAL SERVICE CORPORATION  
Bank of America Financial Center  
601 West Riverside Avenue, Suite 1900  
Spokane, Washington 99201-0695  
(509) 838-6131

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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on the 26 day of March, 2012, at Spokane, Washington, the foregoing was caused to be served on the following person(s) in the manner indicated:

SaraEllen Hutchison  
Law Office of SaraEllenHutchison, PLLC  
107 S. Howard, Suite 230  
Spokane, WA 99201

VIA REGULAR MAIL ☒  
VIA CERTIFIED MAIL ☐  
HAND DELIVERED ☐  
BY FACSIMILE ☐  
VIA FEDERAL EXPRESS ☐

Attorney for Plaintiff



1 Daniel N. Gordon, WSBA #32186  
2 DANIEL N. GORDON, P.C.  
3 4023 W. 1<sup>st</sup> Avenue  
4 P.O. Box 22338  
5 Eugene, Oregon 97402  
6 (541) 342-2276  
7 Fax: (541) 342-8059  
8 dgordonpc@aol.com

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SUPERIOR COURT OF WASHINGTON  
COUNTY OF SPOKANE

THELMA MCBROOM,

Plaintiff,

v.

DANIEL N. GORDON, P.C. an Oregon  
debt collection law firm, and ASSET  
ACCEPTANCE, LLC, a Delaware  
limited liability corporation,

Defendants.

Case No. 12-2-01208-8

NOTICE OF APPEARANCE

Comes now Daniel N. Gordon, attorney at law, and notifies the Court that he is  
appearing as attorney of record for Defendant Asset Acceptance, LLC. All pleadings, motions,  
and correspondence should be sent to:

Daniel N. Gordon, Attorney at Law  
DANIEL N. GORDON, P.C.  
4023 W. 1<sup>st</sup> Avenue  
PO Box 22338  
Eugene, Oregon 97402  
(541) 342-2276  
dgordon@dgordonpc.com

DATED this 30<sup>th</sup> day of March, 2012.

DANIEL N. GORDON, P.C.

*Daniel N. Gordon*

Daniel N. Gordon, WSBA #32186  
Of attorneys for Defendant Asset Acceptance

Daniel N. Gordon, P.C.  
Attorney and Counselor at Law  
4023 W. 1<sup>st</sup> Avenue / P.O. Box 22338  
Eugene, OR 97402  
Phone: (541) 342-2276 FAX: (541) 342-8059



**Certificate of Service**

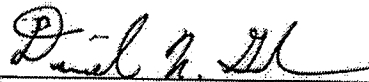
I hereby certify that on the 2nd day of April 2, 2012, I sent a true copy of Defendant Asset Acceptance, LLC's Notice of Appearance by depositing said copy in the United States Mail, postage prepaid, addressed to:

Sara Ellen Hutchison  
107 S. Howard Street, Ste. 230  
Spokane, WA 99201-3818

A true copy of this Notice of Appearance was also emailed to counsel on the above date by sending a copy to counsel to saraellenhutchison@gmail.com

DATED this 2<sup>nd</sup> day of April, 2012.

DANIEL N. GORDON, P.C.



---

Daniel N. Gordon, WSB # 32186  
Of Attorneys for Plaintiff

ORAL ARGUMENT REQUESTED

Daniel N. Gordon, WSBA #32186  
 DANIEL N. GORDON, P.C.  
 4023 W. 1<sup>st</sup> Avenue  
 PO Box 22338  
 Eugene, OR 97402  
 (541) 342-2276  
 dgordon@dgordonpc.com

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
 FOR SPOKANE COUNTY

THELMA MCBROOM,

Plaintiff,

v.

DANIEL N. GORDON, P.C., an Oregon  
 debt collection law firm, and ASSET  
 ACCEPTANCE, LLC, a Delaware  
 Limited liability corporation,

Defendants.

Case No. 12-2-01208-8

MOTION TO DISMISS FOR  
 FAILURE TO STATE A CLAIM  
 AND MOTION TO STRIKE

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

(1) **RELIEF REQUESTED:** Defendant is asking the Court to dismiss plaintiff's complaint against it on the ground that Asset Acceptance is exempt from the Washington Collection Agency Act when it files a law suit by means of independent counsel.

(2) **STATEMENT OF FACTS:** Defendant Asset Acceptance, LLC (hereafter Asset) is a Delaware limited liability company which is in the business of buying distressed debt for collection from the defaulting account holders. Asset sued plaintiff herein in the name of the owner of the debt, i.e., Asset Acceptance, LLC.

(3) **STATEMENT OF ISSUES:** The issue before this court is whether or not Asset is exempt from the WCAA by virtue of the fact that it is collecting its own debt in the state of Washington.

(4) **EVIDENCE RELIED UPON:** No evidence is relied upon because this motion



1 to dismiss for failure to state claim is a motion that goes only to the four corners of plaintiff's  
 2 complaint and it is to test the sufficiency of the pleading. *Askin v. Crown Zellerbach, Inc.*, 8  
 3 *Wn. App. 817, 819; 509 P. 2d 379 (1973).*

4 (5) **ARGUMENT:** Asset agrees with defendant's allegations that it is a purchaser  
 5 of distressed debt, that it sues debtors who do not pay the amount due and owing on the  
 6 account that it purchases, and that it sues debtors in its own true name, i.e., Asset  
 7 Acceptance, LLC.

8 As a debt owner suing debtors in its own true name, Asset is exempt from the  
 9 requirement that it register as a collection agency. RCW 19.16.100 provides the definition of  
 10 "collection agency".

11 RCW 19.16.100 defines "collection agency" as:

12 "Any person directly or indirectly engaged in soliciting claims for  
 13 collection, or collecting or attempting to collect claims owed or due or asserted  
 14 to be owed or due another person . . . ."

15 Asset is not engaged in attempting to "collect claims owed or due or asserted to be  
 16 owed or due to another person." It is collecting its own claims in its own name. The plain  
 17 words of the statute exclude it from the definition of collection agency. Asset should be  
 18 dismissed from the collection agency causes of action based on its statutory exemption from  
 19 registering as a collection agency when it is collecting its own debt.

#### 20 MOTION TO STRIKE

21 (1) **RELIEF REQUESTED:** Asset is moving the Court to strike certain allegations,  
 22 as hereafter described based on improper pleading as hereafter specified.

23 (2) **STATEMENT OF FACTS:** See 2 above.

24 (3) **STATEMENT OF ISSUES:** The issue is whether the allegations that are  
 25 hereafter specified are subject to a motion to strike.

26 (4) **EVIDENCE RELIED UPON:** No evidence is relied upon because this is purely  
 27 a pleading issue.

28 (5) **ARGUMENT:**

CR 12(f) states that a motion to strike is to be made before responding to a pleading.

1 It further states that pleadings may be stricken that are "redundant, immaterial, impertinent,  
2 or scandalous matter."

3 The following allegations of plaintiff's complaint should be stricken:

4 **(1) Paragraph 2.8:** This paragraph should be stricken because it is impertinent and  
5 scandalous. Using words like "notorious" is editorialization and the fact that a Google search  
6 reveals 398,000 results of complaints is immaterial to this case.

7 **(2) Paragraph 4.37:** This paragraph should be stricken because it is impertinent and  
8 scandalous. Using the words "notoriously cavalier" is editorialization and immaterial to this  
9 case.

10 **(3) Paragraph 4.38:** This paragraph should be stricken because it is impertinent and  
11 scandalous. Using the words "victimizing consumers" is editorialization and immaterial to this  
12 case. Moreover, the number of law suits across the United States in which Asset was a  
13 defendant is immaterial to this case.

14 **(4) Paragraph 4.39:** This paragraph should be stricken because it is impertinent and  
15 scandalous. Using the words "notoriously cavalier" is editorialization and immaterial to this  
16 case.

17 **(5) Paragraph 4.40:** This paragraph should be stricken because it is immaterial.  
18 Whether or not Asset files "frivolous and baseless cases" has no bearing on whether this case  
19 was "frivolous and baseless." Plaintiff does not allege that 100% of Asset's cases are frivolous  
20 and baseless." Therefore, whether or not this case was "frivolous and baseless" rests on  
21 whether Asset had the necessary evidence in this case, not any other case. Further, the  
22 allegation that Asset is "victimizing consumers" is scandalous and impertinent because it is  
23 another example of editorialization masquerading as a factual allegation. Finally, the words  
24 "frivolous" and "baseless" are impertinent and scandalous because these words are  
25 editorialization. They could and should be replaced by words like "repeatedly file cases  
26 without possessing sufficient evidence to prevail at trial."

27 **(6) Paragraph 4.48:** This paragraph should be stricken because it is immaterial to this  
28 case. Whether or not the court treats her fairly, and the court is presumed to treat all parties

1 that come before it fairly, in no way proves or disproves plaintiff's allegations.

2 (7) Paragraphs 7.21 through Paragraph 7.28 : These paragraphs should be stricken  
3 because it is immaterial to this case because Asset is not subject to the Washington Collection  
4 Agency Act.

5 (8) Paragraphs 8.1 through Paragraph 8.10: These paragraphs should be stricken  
6 because they are immaterial to this case because Asset is not subject to the Washington  
7 Collection Agency Act.

8 DATED this 30<sup>th</sup> day of March, 2012.

9 DANIEL N. GORDON, P.C.

10 

11 Daniel N. Gordon, WSB# 32186  
12 Of Attorneys for Defendant Asset  
13 Acceptance, LLC  
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Daniel N. Gordon, P.C.,  
Attorney and Counsel at Law  
4023 W. 1<sup>st</sup> Avenue, P.O. Box 23138  
Eugene, OR 97402  
Phone: (541) 345-2376 FAX: (541) 345-8659

**Certificate of Service**

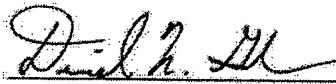
I hereby certify that on the 2nd day of April 2, 2012, I sent a true copy of Defendant Asset Acceptance, LLC's Motion to Dismiss and Motion to Strike by depositing said copy in the United States Mail, postage prepaid, addressed to:

Sara Ellen Hutchison  
107 S. Howard Street, Ste. 230  
Spokane, WA 99201-3818

A true copy of this Motion to Dismiss and Motion to Strike was also emailed to counsel on the above date by sending a copy to counsel to saraellenhutchison@gmail.com

DATED this 2<sup>nd</sup> day of April, 2012.

DANIEL N. GORDON, P.C.



Daniel N. Gordon, WSB # 32186  
Of Attorneys for Plaintiff

1 Daniel N. Gordon, WSBA #32186  
2 DANIEL N. GORDON, P.C.  
3 4023 W. 1<sup>st</sup> Avenue  
4 P.O. Box 22338  
5 Eugene, Oregon 97402  
6 (541) 342-2276  
7 Fax: (541) 342-8059  
8 dgordonpc@aol.com

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SUPERIOR COURT OF WASHINGTON  
COUNTY OF SPOKANE

THELMA MCBROOM,

Plaintiff,

v.

DANIEL N. GORDON, P.C., an Oregon  
debt collection law firm, and ASSET  
ACCEPTANCE, LLC a Delaware  
limited liability corporation,

Defendant.

Case No. 12-2-0128-8

NOTE FOR HEARING ISSUE OF LAW

TO THE CLERK AND TO SARA ELLEN HUTCHISON, ATTORNEY FOR PLAINTIFF

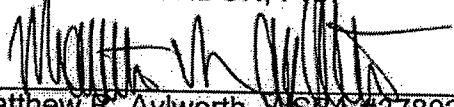
The undersigned has scheduled Defendant's Motion to Dismiss and Motion to Strike for oral argument for April 13, 2012 at 9:00 a.m. before the judge, Tari S. Eitzen, Spokane County Superior Court, 1116 W. Broadway Avenue, Spokane, WA 99260-0350.

Motions must be confirmed NO LATER THAN 10:00 NOON, 2 DAYS BEFORE THE HEARING by contacting the judicial assistant for the assigned judge, or the presiding judge for cases that are not assigned.

Daniel N. Gordon, WSBA #32186  
4023 W. 1<sup>st</sup> Avenue  
PO Box 22338  
Eugene, Oregon 97402  
(541) 342-2276

DATED this 2nd day of April, 2012.

DANIEL N. GORDON, P.C.

  
Matthew R. Aylworth, WSBA #37892, On Behalf Of  
Daniel N. Gordon, WSBA #32186  
Of Attorneys for Defendant Asset Acceptance

**Certificate of Service**

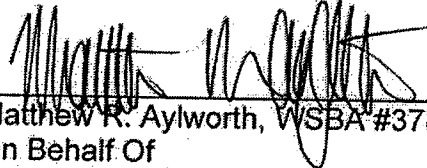
I hereby certify that on the 2nd day of April 2, 2012, I sent a true copy of Defendant Asset Acceptance, LLC's Note for Hearing Issue of Law by depositing said copy in the United States Mail, postage prepaid, addressed to:

Sara Ellen Hutchison  
107 S. Howard Street, Ste. 230  
Spokane, WA 99201-3818

A true copy of this Note for Hearing Issue of Law was also emailed to counsel on the above date by sending a copy to counsel to [saraellenhutchison@gmail.com](mailto:saraellenhutchison@gmail.com)

DATED this 2<sup>nd</sup> day of April, 2012.

DANIEL N. GORDON, P.C.



Matthew R. Aylworth, WSBA #37892  
On Behalf Of  
Daniel N. Gordon, WSBA #32186  
Of Attorneys for Plaintiff

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ORIGINAL FILED

APR 02 2012

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

TARI S. EITZEN

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON,  
IN AND FOR THE COUNTY OF SPOKANE

THELMA MCBROOM,

Plaintiff,

Case No: 12-02-01208-8 CV

vs.

CERTIFICATE OF SERVICE

DANIEL N. GORDON, P.C., an Oregon debt  
collection law firm, and ASSET  
ACCEPTANCE, LLC, a Delaware Limited  
Liability Company,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the state of Washington that  
on the 2nd day of April, 2012, true and correct conformed copies of the SUMMONS AND  
COMPLAINT in the above-captioned matter were mailed, postage prepaid to:

*Robert Lipson, Assistant Attorney General*  
WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL  
CONSUMER PROTECTION DIVISION  
800 FIFTH AVENUE, SUITE 2000  
SEATTLE, WA 98104

Dated this 2nd day of April, 2012, at Spokane, Washington.

  
SaraEllen M. Hutchison

CERTIFICATE OF SERVICE page 1

Law Office of SaraEllen Hutchison, PLLC  
107 S. HOWARD, SUITE 230 | SPOKANE, WA 99201  
PH (509) 252-1899 | FAX (877) 485-4893

EXHIBIT

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APR 05 2012

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

TARIS S. BITZEN

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON,  
IN AND FOR THE COUNTY OF SPOKANE

THELMA MCBROOM,

Plaintiff,

Case No: 12-02-01208-8 CV

vs.

PLAINTIFF'S OPPOSITION TO  
DEFENDANT ASSET ACCEPTANCE,  
LLC'S MOTION TO DISMISS AND  
MOTION TO STRIKE

DANIEL N. GORDON, P.C., an Oregon debt  
collection law firm, and ASSET  
ACCEPTANCE, LLC, a Delaware Limited  
Liability Company,

Defendants.

**OPPOSITION TO DEFENDANT ASSET ACCEPTANCE, LLC'S MOTION TO  
DISMISS AND MOTION TO STRIKE**

COMES NOW Plaintiff, THELMA MCBROOM, by and through her attorney,  
SARAELEN HUTCHISON, and respectfully submits PLAINTIFF'S OPPOSITION TO  
DEFENDANT ASSET ACCEPTANCE, LLC'S MOTION TO DISMISS AND MOTION TO  
STRIKE.

This Opposition is based upon the accompanying memorandum of points and authorities,  
the pleadings and records on file in this action, and any further briefs, evidence, authorities, or  
argument presented before or at the hearing of this motion. Plaintiff respectfully requests (1) an  
order denying Defendant ASSET ACCEPTANCE, LLC's (hereinafter, "ASSET") motion to  
dismiss ASSET from the Second Cause of Action in Plaintiff's Complaint, the Washington State



1 Collection Agency Act violation, (2) an order denying Defendant ASSET's Motion to Strike and  
 2 (3) terms against Defendant ASSET for failure to provide timely notice of its Motions under the  
 3 Washington State Superior Court Civil Rules, which also do not provide for service via email  
 4 without the written consent of the other party; see CR 5(b)(7). ASSET is a debt buyer subject to  
 5 the Washington State Collection Agency Act, and Plaintiff expects to prove all the allegations  
 6 against ASSET that ASSET wishes to strike from Plaintiff's Complaint. In the alternative,  
 7 Plaintiff requests that the Court deny ASSET's motion on such claims as the Court finds are not  
 8 subject to CR 12(b)(6) and not subject to CR 12(f), and grant Plaintiff leave to amend her  
 9 Complaint if necessary.

#### 10 MEMORANDUM OF POINTS AND AUTHORITIES

11 Plaintiff hereby respectfully submits this Memorandum in support of her Opposition to  
 12 ASSET's Motion to Dismiss and Motion to Strike.

#### 13 I. INTRODUCTION

14 The mass filing of collection lawsuits by junk debt buyers and collection law firms is a  
 15 scavenger industry. Defendant, ASSET, is a large national junk debt buyer. Debt buyers pay as  
 16 little as pennies on the dollar for old debts hoping that by filing lawsuits, unsophisticated debtors  
 17 can be pressured into paying legally unenforceable debts. The debts are legally unenforceable  
 18 because the debt buyer has minimal account records that are inadmissible hearsay and are  
 19 insufficient to prove chain of title. Typically, the debt buyer's records are electronic because  
 20 paper is too expensive. The debt buyer keeps lists of purchased debts and has its own employees  
 21 attest to the authenticity of the lists. A debt buyer may produce a bill of sale that ostensibly  
 22 includes the debt in question, however, the bill of sale fails to mention the debtor or the debtor's  
 23 account. The bill of sale simply directs the reader to view an exhibit, which supposedly contains  
 24 the accounts purchased. The debt buyer does not produce the exhibit, however, but even if it did,  
 25 it is inadmissible hearsay because the debt buyer creates the list. Regardless, the sales are  
 "without recourse" because the buyers and sellers both know the accounts are generally  
 unenforceable.

As outlined in Plaintiff's Complaint and as Plaintiff expects to establish in discovery, ASSET's acts are typical of the problems inherent in the debt buying industry. In this case, a defaulted Citibank credit card account allegedly belonging to Plaintiff was sold to ASSET. ASSET then, through Defendant DANIEL N. GORDON, P.C., filed a lawsuit against Plaintiff, Spokane County District Court Case Number 11131107 CV, to collect the debt that ASSET claimed to own, then dismissed without prejudice when ASSET failed to obtain a quick default judgment against Plaintiff. This is typical: when a consumer defends an action brought by a debt buyer, even if the consumer is *pro se*, a debt buyer will usually dismiss rather than face the court with no admissible evidence to prove its case. Plaintiff is a consumer injured by these actions of Defendants and was forced to investigate the problem to protect her interests.

It should be no surprise that the Defendants, ASSET and DANIEL N. GORDON, P.C., have been repeatedly sued by consumers under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 (hereinafter also "FDCPA"), a broad remedial statute designed to protect consumers against the unfair and deceptive acts of debt collectors. The FDCPA applies to collection law firms and debt buyers like Defendants, but generally does not include original creditors' in-house collectors. 15 U.S.C. § 1692a. ASSET does not dispute that it is subject to the FDCPA, nor does ASSET allege that it is an original creditor.

The Washington State Collection Agency Act, RCW 19.16 et seq., (hereinafter also "CAA") is similar to its federal counterpart, the FDCPA. The CAA goes further than the FDCPA, however. The CAA provides an avenue for injunctive relief against such business practices through a *per se* violation of the Washington State Consumer Protection Act (hereinafter also "CPA"). RCW 19.16.440. The CAA is one of over 60 Washington statutes listed as *per se* violations of the CPA, and thus the CAA and CPA must be read together as a coherent statutory scheme. The broad purpose of the CPA is explicit at RCW 19.86.120, which provides, in relevant part:

The legislature hereby declares that the purpose of this act is to complement the body of federal law governing restraints of trade, unfair competition and unfair, deceptive, and fraudulent acts or practices in order to

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1 protect the public and foster fair and honest competition. It is the intent of the  
 2 legislature that, in construing this act, the courts be guided by final decisions of  
 the federal courts and final orders of the federal trade commission interpreting the  
 various federal statutes dealing with the same or similar matters...

3 In addition to having a similar broad remedial purpose, Washington State's CAA and CPA  
 4 look to the FDCPA and the Federal Trade Commission for guidance. For example, the CAA  
 5 provides that any entity that is found by a Washington Court to have violated the FDCPA within  
 6 the last two years is engaged in unprofessional conduct pursuant to RCW 19.16.120(4)(h). Like  
 7 the FDCPA, the CAA and the CPA are intended to be liberally applied in favor of the consumer  
 8 and any exceptions are to be narrowly construed. The CAA affords greater protection to  
 9 consumers than the FDCPA in multiple ways, including requiring initial written communications  
 10 to consumers to include more detail about the debt than required by the FDCPA and specifically  
 11 limiting the number of calls per week; see RCW 19.16.250.

12 Like the FDCPA, the CAA categorically excludes original creditors from the statute. RCW  
 13 19.16.100(3)(c). Furthermore, RCW 19.16.100(4) specifically references the FDCPA's exclusion  
 14 of original creditors at 15 U.S.C. § 1692a(6). A debt buyer is absolutely a "debt collector" under  
 15 the FDCPA, and as the CAA does not categorically exclude debt buyers from the definition of  
 16 "collection agency," to exclude debt buyers from liability under the CAA would be an absurd  
 result that would not give effect to the purpose of the statute.

17 The allegations in Plaintiff's Complaint are pointed because Defendants' conduct is far  
 18 from benign; in fact, it is unfair, deceptive, intentional, repeated, and is contrary to the public  
 19 interest. Words like "cavalier" and "victimizing" are carefully chosen and appropriately  
 20 descriptive of these out-of-state Defendants' conduct toward Washington State consumers, and  
 21 references to the widespread bad reputation of Defendants, and frequency Defendants find  
 22 themselves sued for such conduct is essential to pleading all elements of the Consumer  
 23 Protection Act claim. Defendants' conduct is the very type of business practice that the  
 24 Washington State Legislature intended to prevent and remedy when it passed the Consumer  
 25 Protection Act and the Collection Agency Act. This conduct has continued by ASSET's serving

1 Plaintiff with motions via U.S. Mail arriving on April 4, 2012, only nine days before the motion  
 2 hearing, and attempting email service (untimely on April 2, 2012) without Plaintiff's written  
 3 consent.

4 As discussed below, Plaintiff states a CAA claim against ASSET and expects to prove  
 5 the allegations against both Defendants in her Complaint. For these reasons, and the reasons  
 6 below, ASSET's motion to dismiss and motion to strike are improper and must be denied.  
 7 Furthermore, terms should be awarded to Plaintiff against ASSET for ASSET's failure to  
 8 provide proper and timely notice of its motions.

## 9 **II. LEGAL STANDARD**

10 **A. A Defendant's motion for dismissal pursuant to CR 12(b)(6) must  
 11 be denied when Plaintiff states a claim under a statute and Defendant is  
 12 subject to that statute.**

13 The trial court should grant a CR 12(b)(6) motion to dismiss only if it appears beyond a  
 14 reasonable doubt that no facts exist that would justify recovery. Atchison v. Great Western  
 15 Malting Co., 161 Wn.2d at 376, 166 P.3d 662 (2007) (quoting Cutler v. Phillips Petroleum Co.,  
 16 124 Wn.2d 749, 755, 881 P.2d 216 (1994)). If a plaintiff pleads facts that justify recovery, the  
 17 court cannot ignore the total statutory scheme in favor of an absurd interpretation. [Washington  
 18 courts] follow general principles of statutory construction which require that statutes be  
 19 construed in the manner that best fulfills the legislative purpose and intent, and where possible,  
 20 statutes should be read together to determine legislative purpose so as to achieve a harmonious  
 21 total statutory scheme which maintains the integrity of the respective statutes. FIRE PROTEC.  
 22 DISTS. v. Housing Authority, 123 Wn.2d 819, 826-827, 872 P. 2d 516 (1994) (internal footnotes  
 23 omitted). See also City of Ellensburg v. State, 118 Wn.2d 709, 713, 826 P. 2d 1081 (1992);  
 24 Employco Personnel Servs., Inc. v. Seattle, 117 Wn.2d 606, 614, 817 P.2d 1373 (1991).

25 **B. A motion to strike portions of a complaint must be denied when  
 Plaintiff properly, accurately and appropriately pleads material facts it  
 expects to prove.**

A Plaintiff is entitled to plead and describe facts. Civil Rule 8 only requires "a short and  
 plain statement of the claim showing that the pleader is entitled to relief," and subject to the

obligations of CR 11, that it is well grounded in fact and not for any impermissible purpose. Civil Rule 12(f), like the federal rule, provides in relevant part that the court may strike any "insufficient defense or any redundant, immaterial, impertinent, or scandalous matter" from a pleading. On considering a motion to strike, a trial court does not abuse its discretion in allowing information of a "factual nature;" see Orion Corporation v. State, 109 Wn.2d 621, 637-638, 747 P. 2d 1062 (1987), cert. denied, 486 U.S. 1022 (1988). Material that is not "redundant," "impertinent," "scandalous," or "immaterial" cannot be subject to a motion to strike. Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973-974 (9<sup>th</sup> Cir. 2010). Immaterial matter is that which has no essential or important relationship to the claim for relief or the defenses being pleaded. Fantasy, Inc. v. Fogerty, 984 F. 2d 1524, 1527 (9<sup>th</sup> Cir 1993) (rev'd on other grounds, Fogerty v. Fantasy, Inc., 510 U.S. 517, 114 S.Ct. 1023, 127 L.Ed.2d 455 (1994) (internal citations and quotations omitted)). Furthermore, "Allegedly libelous statements, spoken or written by a party or counsel in the course of a judicial proceeding, are absolutely privileged if they are pertinent or material to the redress or relief sought, whether or not the statements are legally sufficient to obtain that relief." McNeal v. Allen, 95 Wn.2d 265, 621 P. 2d 1285 (1980) (quoting Gold Seal Chinchillas, Inc. v. State, 69 Wn.2d 828, 420 P.2d 698 (1966)); see also Twelker v. Shannon & Wilson, 88 Wn.2d 473, 564 P.2d 1131 (1977).

### III. ARGUMENT

A. Plaintiff states a claim against ASSET under the Washington State Collection Agency Act because a debt buyer is subject to the CAA, and thus, 12(b)(6) dismissal is improper and must be denied.

ASSET is a debt buyer and therefore is a "collection agency" subject to the CAA. The CAA provides, in relevant part:

**Unless a different meaning is plainly required by the context,** the following words and phrases as hereinafter used in this chapter shall have the following meanings.... (3) "Collection agency" does not mean and does not include.... (c) Any person whose collection activities are carried on in his, her, or its true name **and are confined and are directly related to the operation of a business other than that of a collection agency, such as but not**



1 limited to: Trust companies; savings and loan associations; building and loan  
 2 associations; abstract companies doing an escrow business; real estate brokers;  
 3 property management companies collecting assessments, charges, or fines on  
 4 behalf of condominium unit owners associations, associations of apartment  
 5 owners, or homeowners' associations; public officers acting in their official  
 6 capacities; persons acting under court order; lawyers; insurance companies; credit  
 7 unions; loan or finance companies; mortgage banks; and banks[.] (Emphasis  
 8 added.)

9 Debt buyers are not original creditors, banks, brokers, condominium associations, or anything  
 10 like any of the other businesses categorically excluded from the definition of collection agency  
 11 under the CAA. Not only are debt buyers *not* categorically excluded from the statute, debt  
 12 buyers are nothing like any of the businesses specifically identified and it would be nonsensical  
 13 for this court to re-write the statute to exclude debt buyers.

14 Plaintiff's complaint states a claim as to Defendant ASSET's liability under the CAA,  
 15 and therefore 12(b)(6) dismissal is improper. ASSET does *not* contend that it is not a "debt  
 16 collector" subject to the FDCPA, but claims in essence that as a debt buyer, it should be regarded  
 17 as an original creditor in the eyes of the CAA, even though the CAA provides greater protection  
 18 to consumers than what is provided by the FDCPA. To be excluded from the CAA and stand on  
 19 the level of an original creditor, the CAA requires not only that a person conduct "collection  
 20 activities...in his, her, or its true name" but must *also* be like one of the businesses listed. The  
 21 statute does not say "or;" it says "and." The purpose of this section is to exclude original  
 22 creditors and their ilk in similar fashion to the FDCPA. A debt buyer in the same field with  
 23 original creditors, brokers, and credit unions is a wolf in sheep's clothing. The intent of the  
 24 statute is thus to "protect the herd;" the law rightfully has a very different policy toward original  
 25 creditors. Original creditors have risk, in contrast to debt buyers, who invested pennies on the  
 dollar. Our laws recognize that the indirect relationship between consumer and mercenary third-  
 party collector places the consumer at a greater disadvantage, and this is why the activities of  
 debt collectors are more scrutinized. The *further*-removed relationship between consumer and  
*debt buyer*, more distant and broken than a breadcrumb trail, is worse for the consumer, because  
 the debt buyer has practically nothing to lose. ASSET's assertion that it is not subject to the

CAA, therefore, is facetious. ASSET asks this Court to make an absurd holding that would not give effect to the purpose of the statute. This Court must honor the intent of the Washington State Legislature and interpret the CAA in the context of its coherent, broadly remedial statutory scheme; the Consumer Protection Act, which provides for injunctive relief, and the Fair Debt Collection Practices Act which provides for the “floor” or baseline level of consumer protection. ASSET’s 12(b)(6) motion is improper and should be denied.

**B. Plaintiff’s Complaint is proper and Plaintiff expects to prove the allegations therein.**

The Washington State Consumer Protection Act, RCW 19.86 et seq. is a broad statute designed to protect consumers and provide injunctive relief from unfair and deceptive business practices. A plaintiff bringing an action under the CPA must make a prima facie case consisting of these elements: (1) unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or property; (5) causation. See, Hangman Ridge Training Stables, Inc. v. Safeco, 105 Wn.2d 778, 780, 719 P.2d 531 (1986). A violation of the CAA is a *per se* violation of the CPA; see RCW 19.16.440. As established above, ASSET makes no claim that it is exempt from the definition of “debt collector” under 15 U.S.C. § 1692 et seq., and ASSET is also a “collection agency” for purposes of the CAA. ASSET also makes no claim that it is exempt from the CPA. ASSET, nevertheless, wants stricken from the Complaint as “scandalous,” “immaterial,” or “impertinent” many of the allegations that support important elements of the CPA: that the conduct caused injury, that it is capable of repetition and that it affects the public interest. Plaintiff’s allegations of Defendants’ widespread abuse of the legal system and unfair collection tactics are not scandalous, immaterial, or impertinent, and thus ASSET’s motion to strike is improper and must be denied.

Regarding injury under the CPA, “The scope of injury to ‘property’ is especially broad and is not restricted to commercial or business injury.” Stephens v. Omni Ins. Co., 138 Wn.App. 151, 159 P. 3d 10, 25 (Div. 1 2007) (citing Keyes v. Bollinger, 31 Wn.App. 286, 296, 640 P.2d 1077 (Div. 1 1982)). “The inconvenience caused by an unfair or deceptive act and the time of

1 investigating the threat of property loss or damaged credit are actionable injuries under the CPA,  
 2 which is not mere "emotional injury." See, Stephens, 159 P.3d at 25; Sign-O-Lite Signs v.  
 3 DeLaurenti Florists, 64 Wn.App. 553, 825 P.2d 714 (Div. 1 1992). The CPA does not require  
 4 proof of monetary damages to establish injury. Mason v. Mortgage Am., Inc. 114 Wn.2d 842,  
 5 792 P.2d 142 (1990).

6 Regarding public interest under the CPA, a plaintiff must plead that the unfair conduct  
 7 affects the populace as a whole and is capable of repetition, and a plaintiff who has firsthand  
 8 knowledge of her experience alone must still plead relevant facts that indicate that it is not  
 9 simply a private matter of no concern to other Washington State citizens. "[I]t is the likelihood  
 10 that additional plaintiffs have been or will be injured in exactly the same fashion that changes a  
 11 factual pattern from a private dispute to one that affects the public interest." McRae v. Bolstad,  
 12 101 Wn.2d 161, 676 P.2d 496 (1984). The Hangman Ridge court outlined the following  
 13 considerations for the "public interest" element: (1) Were the alleged acts committed in the  
 14 course of defendant's business? (2) Are the acts part of a pattern or generalized course of  
 15 conduct? (3) Were repeated acts committed prior to the act involving plaintiff? (4) Is there a real  
 16 and substantial potential for repetition of defendant's conduct after the act involving plaintiff? (5)  
 17 If the act complained of involved a single transaction, were many consumers affected or likely to  
 be affected by it? 105 Wn.2d at 790.

18 Here, Plaintiff has pleaded facts Plaintiff expects to prove which address multiple factors  
 19 of the "public interest" element, including: that Defendants file many lawsuits against  
 20 Washington consumers every year with little or no admissible evidence of a debt; that this is  
 21 Defendants' regular business and *raison d'être*; that if Plaintiff does not obtain the injunctive  
 22 relief she seeks, that Defendants will continue to take advantage of Washington citizens by filing  
 23 more cases in the future; that unsophisticated consumers and pro se litigants are treated unfairly  
 24 by Defendants and that Plaintiff hopes that she is treated fairly in this litigation because the  
 25 public interest is at stake. There is nothing in Washington law that requires a plaintiff to allege

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1 that "100%" of a defendant's activities are unfair and deceptive for a plaintiff to meet the public  
2 interest element of a CPA claim. If Defendants want to challenge particular evidence of their  
3 conduct, reputation, or practices, a motion to strike pleadings is not the proper vehicle for  
4 Defendants to raise an evidentiary issue, especially when discovery has not yet begun.


5 Finally, language such as "notorious," "cavalier," and "victimizing" are words that  
6 appropriately describe the seriousness and widespread nature of Defendants' unfair acts and  
7 practices and reflect the nature and quality of Plaintiff's actual damages in this matter.

#### 8 IV. CONCLUSION

9 For the foregoing reasons, Plaintiff respectfully requests that this Court deny ASSET's  
10 motion to dismiss and motion to strike and grant Plaintiff terms for ASSET's failure to provide  
11 proper notice of its motions under the Civil Rules.

12 DATED this 5<sup>th</sup> day of April, 2012.

13  
14 Respectfully submitted,

15  
16   
17 SaraEllen Hutchison (WSBA #36137)  
18 Law Office of SaraEllen Hutchison, PLLC  
19 107 S. Howard, Suite 230  
20 Spokane, WA 99201  
21 Telephone: 509-252-1899  
22 Facsimile: 877-485-4895  
23 *Attorney for Plaintiff*  
24  
25

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APR 05 2012

**CERTIFICATE OF SERVICE**

THOMAS R. FALLOQUIST  
SPOKANE COUNTY CLERK  
TARIS EITZEN

I hereby certify under penalty of perjury under the laws of the state of Washington that  
on the 5<sup>th</sup> day of April, 2012, a true and correct copy of the foregoing

PLAINTIFF'S OPPOSITION TO DEFENDANT ASSET ACCEPTANCE, LLC'S MOTION  
TO DISMISS AND MOTION TO STRIKE

Was sent via next-day FedEx to:

DANIEL N. GORDON, P.C.  
4023 W. 1<sup>st</sup> AVE.  
EUGENE, OR 97402

And was hand delivered to:

KEVIN CURTIS, ATTORNEY AT LAW  
WINSTON & CASHATT, LAWYERS, A PROFESSIONAL SERVICE CORPORATION  
601 WEST RIVERSIDE AVENUE, SUITE 1900  
SPOKANE, WA 99201-0695

Dated this 5<sup>th</sup> day of April, 2012, at Spokane, Washington.

  
SaraEllen M. Hutchison

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APR 09 2012

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

TARI S. EITZEN

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SPOKANE**

THELMA MCBROOM

Plaintiff,

NO. 12-02-01208-8 CV

vs.

**NOTICE OF ABSENCE AND  
UNAVAILABILITY**

DANIEL N. GORDON, P.C., an Oregon  
debt collection law firm, and ASSET  
ACCEPTANCE, LLC, a Delaware Limited  
Liability Company,

Defendants.

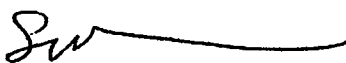
**TO: The Clerk of Court**  
**AND TO: Asset Acceptance, LLC, and your attorney, DANIEL N. GORDON, P.C.**  
**AND TO: Daniel N. Gordon, P.C., and your attorney, KEVIN CURTIS, WINSTON CASHATT**

PLEASE TAKE NOTICE that SARAELLEN HUTCHISON, of the Law Office of SaraEllen Hutchison, PLLC, Attorney of record for Plaintiff in the above-captioned matter, shall be unavailable on the following dates because she will be in Dubois, Wyoming for the Gerry Spence Trial Lawyers College 3-week course:

**Thursday, July 12, 2012 - THROUGH - Monday, August 6, 2012**

This notice is to inform the parties and Clerk of Court that NO COURT HEARINGS or DEPOSITIONS should be scheduled on any of the above dates.

DATED this April 9, 2012.



SARAELLEN HUTCHISON WSBA #36137  
Attorney for Plaintiff

NOTICE OF ABSENCE AND  
UNAVAILABILITY page 1

Law Office of SaraEllen Hutchison, PLLC  
107 S. HOWARD, SUITE 230 | SPOKANE, WA 99201  
PH (509) 752-1899 | FAX (509) 485-4893

EXHIBIT

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ORIGINAL FILED

APR 09 2012

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

**CERTIFICATE OF SERVICE**

**TARI S. EITZEN**

I hereby certify under penalty of perjury under the laws of the state of Washington that  
on the 9<sup>th</sup> day of April, 2012, a true and correct copy of the foregoing

**NOTICE OF ABSENCE AND UNAVAILABILITY**

Was sent via U.S. Mail, postage prepaid to:

DANIEL N. GORDON, P.C.  
4023 W. 1<sup>st</sup> AVE.  
EUGENE, OR 97402

And to:

KEVIN CURTIS, ATTORNEY AT LAW  
WINSTON & CASHATT, LAWYERS, A PROFESSIONAL SERVICE CORPORATION  
601 WEST RIVERSIDE AVENUE, SUITE 1900  
SPOKANE, WA 99201-0695

Dated this 9<sup>th</sup> day of April, 2012, at Spokane, Washington.

  
SaraEllen M. Hutchison

68

1 Daniel N. Gordon, WSBA #32186  
2 DANIEL N. GORDON, P.C.  
3 4023 W. 1<sup>st</sup> Avenue  
4 P.O. Box 22338  
5 Eugene, Oregon 97402  
6 (541) 342-2276  
7 Fax: (541) 342-8059  
8 dgordonnpc@aol.com

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SUPERIOR COURT OF WASHINGTON  
COUNTY OF SPOKANE

THELMA MCBROOM,

Plaintiff,

v.

DANIEL N. GORDON, P.C., an Oregon  
debt collection law firm, and ASSET  
ACCEPTANCE, LLC a Delaware  
limited liability corporation,

Defendant.

Case No. 12-2-0128-8

NOTE FOR HEARING ISSUE OF LAW

TO THE CLERK AND TO SARA ELLEN HUTCHISON, ATTORNEY FOR PLAINTIFF

The undersigned has scheduled Defendant's Motion to Dismiss and Motion to Strike for oral argument for April 25, 2012 at 9:00 a.m. before the judge, Tari S. Eitzen, Spokane County Superior Court, 1116 W. Broadway Avenue, Spokane, WA 99260-0350.

THIS NOTE SUPERSEDES ANY AND ALL PREVIOUS NOTES FOR HEARING on Defendant's Motion to Dismiss and Motion to Strike.

Motions must be confirmed NO LATER THAN 10:00 NOON, 2 DAYS BEFORE THE HEARING by contacting the judicial assistant for the assigned judge, or the presiding judge for cases that are not assigned.

Daniel N. Gordon, WSBA #32186  
4023 W. 1<sup>st</sup> Avenue  
PO Box 22338  
Eugene, Oregon 97402  
(541) 342-2276

DATED this 9<sup>th</sup> day of April, 2012.

DANIEL N. GORDON, P.C.

*Daniel N. Gordon*  
Daniel N. Gordon, WSBA #32186  
Of Attorneys for Defendant Asset Acceptance

Daniel N. Gordon, P.C.  
Attorney and Counselor at Law  
4023 W. 1<sup>st</sup> Avenue / P.O. Box 22338  
Eugene, OR 97402  
Phone: (541) 342-2276 FAX: (541) 342-8059

EXHIBIT

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**Certificate of Service**

I hereby certify that on the 9th day of April, 2012, I sent a true copy of Defendant Asset Acceptance, LLC's Note for Hearing Issue of Law by depositing said copy in the United States Mail, postage prepaid, addressed to:

Sara Ellen Hutchison  
107 S. Howard Street, Ste. 230  
Spokane, WA 99201-3818

A true copy of this Note for Hearing Issue of Law was also emailed to counsel on the above date by sending a copy to counsel to [saraellenhutchison@gmail.com](mailto:saraellenhutchison@gmail.com).

DATED this 9th day of April, 2012.

DANIEL N. GORDON, P.C.

A handwritten signature in black ink, appearing to read "Daniel N. Gordon", written over a horizontal line.

Daniel N. Gordon, WSBA #32186  
Of Attorneys for Defendant Asset Acceptance

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR SPOKANE COUNTY

THELMA MCBROOM,

Plaintiff,

v.

DANIEL N. GORDON, PC., an Oregon  
debt collection law firm, and ASSET  
ACCEPTANCE, LLC, a Delaware  
Limited Liability Company,

Defendants.

Case No. 12-2-01208-8 CV

NOTICE OF WITHDRAW AND  
SUBSTITUTION OF COUNSEL

TO: The Clerk of the Court,

AND TO: Plaintiff, Thelma McBroom and Plaintiff's Attorney, Saraellen Hutchinson,

AND TO: Defendant, Daniel N. Gordon, P.C. and Defendant's Attorney, Kevin J. Curtis.

YOU ARE HEREBY NOTIFIED that effective immediately the undersigned attorney  
Daniel N. Gordon of Daniel N. Gordon P.C., hereby withdraws as counsel of record for  
the Defendant, Asset Acceptance, LLC, and will be substituted by John D. Munding of  
Crumb & Munding, P.S.,

EXHIBIT

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NOTICE OF WITHDRAW AND SUBSTITUTION OF COUNSEL - 1

CRUMB & MUNDING, P.S.  
THE DAVENPORT TOWER  
111 S. POST STREET, PH 2290  
SPOKANE, WA 99201  
(509) 624-6464  
FAX (509) 624-6155

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1 PLEASE TAKE FURTHER NOTICE that all pleadings, notes, documents and other  
2 papers, exclusive of original process, shall be also serviced upon:  
3

4 JOHN D. MUNDING  
5 Crumb & Munding, P.S.  
6 The Davenport Tower  
7 111 S. Post Street, PH 2290  
8 SPOKANE, WA 99201  
9 munding@crumb-munding.com  
10 (509) 624-6464  
11 Fax (509) 624-6155

12 Dated this \_\_\_\_ day of April, 2012.

13 DANIEL N. GORDON, P.C.

14 DANIEL N. GORDON, WSBA # 32186  
15 Withdrawing Attorney

16  
17 CRUMB & MUNDING, P.S.

18  
19 JOHN D. MUNDING, WSBA #21734  
20 Attorney for Defendant Asset Acceptance, LLC  
21  
22  
23  
24  
25  
26



**COPY**  
ORIGINAL FILED

APR 25 2012

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

TARI S. EITZEN

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON,  
IN AND FOR THE COUNTY OF SPOKANE**

THELMA MCBROOM,

Plaintiff,

Case No: 12-02-01208-8 CV

vs.

**CERTIFICATE OF SERVICE**

DANIEL N. GORDON, P.C., an Oregon debt  
collection law firm, and ASSET  
ACCEPTANCE, LLC, a Delaware Limited  
Liability Company,

Defendants.

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury under the laws of the state of Washington that  
on the 25<sup>th</sup> day of April, 2012, true and correct conformed copies of the SUMMONS AND  
COMPLAINT in the above-captioned matter were mailed, postage prepaid to: KEVIN  
CURTIS, attorney of record for and authorized to accept service on behalf of Defendant  
DANIEL N. GORDON, P.C. at:

KEVIN CURTIS, ATTORNEY AT LAW  
WINSTON & CASHATT, LAWYERS, A PROFESSIONAL SERVICE  
CORPORATION  
601 W. RIVERSIDE AVE. SUITE 1900  
SPOKANE, WA 99201-0695

CERTIFICATE OF SERVICE page 1

Law Office of SaraEllen Hutchison, PLLC  
107 S. HOWARD, SUITE 230 | SPOKANE, WA 99201  
PH.(509) 252-1899 | FAX (877) 485-4893

**EXHIBIT**

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1  
2 A copy of this Certificate of Service was also mailed, postage prepaid and  
3 emailed to John D. Munding, attorney of record for Defendant ASSET ACCEPTANCE,  
4 LLC at:

5 JOHN D. MUNDING, ATTORNEY AT LAW  
6 CRUMB & MUNDING, P.S.  
7 111 S. POST ST. PH 2290  
8 THE DAVENPORT TOWER  
9 SPOKANE, WA 99201  
10 munding@crumb-munding.com

11  
12 Dated this 25<sup>th</sup> day of April, 2012, at Spokane, Washington.

13   
14 Sara Ellen M. Hutchison